

MILITARY LAW REVIEW VOL. 93

Professional Writing Award for 1980

International and Comparative Law Symposium

ARTICLES

Organization for Battle: The Judge Advocate's
Responsibility Under Article 82 of Protocol I
to the Geneva Conventions

The Organization of Military Courts in Thailand

The Exclusionary Rule: Comparison of
Israeli and United States Approaches

BOOK REVIEW

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MILITARY LAW REVIEW (USPS 482-130)

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ERRATA

In the text on page **25** of volume **92**, the first sentence in the first full paragraph should be changed to read, "Under the new rule, both spouses are competent to testify. Only the witness spouse is the holder of the privilege to refuse to testify."

In the footnotes on page **79** of volume **92**, the paragraph beginning, "While such an analogy . . . is part of footnote 13 and should have been placed at the bottom of the page.

PROFESSIONAL WRITING AWARD FOR 1980

I. INTRODUCTION

Each year, the **Alumi** Association of The Judge Advocate General's School, Charlottesville, Virginia, gives **an** award to the author of the best article published in the *Military Law Review* during the previous calendar year. The purposes of this award are to recognize outstanding scholarly achievements in military legal writing and to encourage further writing.

The award was first given for an article published in **1963**, in the sixth year of the *Review's* existence. It consists of a citation signed by The Judge Advocate General and an engraved plaque. Selection of a winning article is based upon the article's usefulness to judge advocates in the field, its long-term value as an addition to military legal literature, and the quality of its writing, organization, analysis, and research.'

11. THE AWARD FOR 1980

The award for 1980 was presented to Gail M. Burgess, Esquire, for her article entitled, "Official Immunity and Civil Liability for Constitutional Torts Committed by Military Commanders after *Butz v. Economou*."² This article was published in volume **89**, the summer **1980** issue of the *Military Law Review*. Ms. Burgess is currently a clerk working under U.S. District Court Judge James T. Giles of the Eastern District of Pennsylvania, Philadelphia, Pennsylvania.³

¹A more complete account of the history of the award and a detailed description of applicable selection criteria and procedures appears at **87** Mil L. Rev. **1** (winter **1979**). A discussion of the award for **1979** appears at **90** Mil. L. Rev. **1** (fall **1980**).

²**89** Mil. L. Rev. 25 (summer **1980**).

³**Ms.** Burgess has been a clerk since June **1981**. She was an associate with the law firm of Pepper, Hamilton & Scheetz, Philadelphia, Pa., in **1979-1980** and early **1981**. Ms. Burgess served on active duty as a First Lieutenant in the United States Marine Corps from April to November **1980**. She worked as a student intern in the Policy and Research Branch, Judge Advocate Division, HQ, **USMC**,

In this article, Ms. Burgess reviews the Supreme Court's decision in the case of *Butz v. Economou*,⁴ and discusses its possible application to military commanders.

Arthur N. Economou was a commodity futures commission merchant. In 1970, the Department of Agriculture initiated action to suspend his registration for allegedly failing to maintain the minimum required financial resources. Economou sued the Secretary of Agriculture and various subordinate officials for actions allegedly taken by them against Economou in violation of his constitutional rights. He claimed large monetary damages. The officials defended on grounds of absolute immunity against suit for executive actions within the officials' discretionary authority.

In a long opinion, the United States Supreme Court held that, in general, only qualified immunity, not absolute immunity, is available to officials accused of constitutional wrongs. The applicable standard of immunity is that which pertains to state executive officials. There are some exceptions; administrative law judges, for example, enjoy absolute immunity. But most officials cannot benefit from such exceptions.

Ms. Burgess argues that there is nothing to prevent application of this rule of law against military commanders, and that they could be sued and held personally liable for damages under the rule of *Butz v. Economou*. She urges that commanders be made aware of this, and that remedial legislation be requested from Congress.

The article helps greatly to clarify a complex and important area of the law which is often difficult to apply in practical situations. This type of article is especially helpful to the judge advocate or attorney advisor in field legal offices where research materials, as well as the time to utilize them, are often lacking.

Washington, D.C., during the summers of 1977 and 1978.

Ms. Burgess earned a B.A.m.c.l. from the University of Virginia in 1976, and a J.D. from the University of Virginia School of Law in 1979. She is a member of the bars of the Supreme Court of Pennsylvania and the U.S. District Court for the Eastern District of Pennsylvania.

⁴438 U.S. 478 (1979).

III. CONCLUSION

The award for 1980 is the eighteenth presented since the TJAGSA Alumni Association Professional Writing Award was initiated. The 1980 award is the first presented to a woman. It is the fifth presented for an article dealing primarily with an administrative law or military affairs topic.⁵ Like the last three award-winning articles, this one was not a graduate (advanced) class or LL.M. thesis, but was written specifically for publication in a periodical such as the *Military Law Review*.⁶

With pride and gratitude, the *Military Law Review* congratulates Ms. Burgess on her achievement. Fine work such as hers has earned for the *Review* and for The Judge Advocate General's School the respect of the military legal community.

*The other four were the subjects of the awards for 1964, 1967, 1969, and, in part, 1975. See full citations at 87 Mil. L. Rev. 3 (winter 1979).

⁶The articles which were the subjects of the awards for 1977, 1978, and 1979 were prepared by members of the faculty at The Judge Advocate General's School, Charlottesville, Virginia, as extensions of their work. Very few graduate (advanced) class theses have been written since the thesis program of the JAG School was made optional beginning with academic year 1976-1977.

INTERNATIONAL AND COMPARATIVE
LAW SYMPOSIUM

The *Military Law Review* has previously presented three issues devoted primarily to international law since the current series of symposia or theme issues began with volume 80 (spring 1978).¹ However, none of those three collections of essays had quite the international flavor and breadth of the present issue.

In the first article, on a traditional law-of-war topic, Major Levator Norsworthy writes concerning United States responsibilities under Protocol I to the Geneva Conventions of 1949. Under Article 82 of that protocol, signatory states are required to ensure that their military commanders have legal advisors available to inform them of the specific requirements of the law of war, and to advise them concerning ways and means of disseminating practical information about the law of war to the troops, including programs of formal instruction.

For decades, American judge advocates have provided advice on international law to commanders and have instructed troops in their duties under the Geneva Conventions. Thus, the work required by Protocol I is not entirely new. However, there are differences. Major Norsworthy opines that judge advocates should expect to be more deeply involved than before in planning for battle. Concerning instruction for the troops, the author believes that practical exercises, incorporated into field training exercises, would be more effective than platform instruction. More judge advocate time may have to be devoted to these functions than in the past.

The United States signed Protocol I after work was completed on its text in 1977. However, the Senate has not yet ratified the Protocol, and the document is not yet in force for the United States. Nevertheless, Protocol I is now part of the body of international law, as a growing number of states have completed their formal ratification procedures.

¹These were volume 82 (fall 1978), volume 83 (winter 1979), and volume 90 (fall 1980).

The *Military Law Review* has published a number of articles concerning the Geneva Protocols of 1977. Among these are a comment by the late Professor R. R. Baxter of Harvard Law School, who participated in the drafting of the **Protocols**,² and an edited transcript of a panel discussion held at the Judge Advocate General's School on 6 April 1978.³ Two articles in volume 90 discuss specialized applications of the Protocols in conjunction with the Geneva Conventions and other international law.⁴

The second article presented in the present volume is a description of the military justice system of the Kingdom of Thailand. This was written by Lieutenant Colonel Suthee Charoonbara of the Royal Thai Army, who was a student at The Judge Advocate General's School during academic year 1978-79. He discusses particularly the various types of trial and appellate courts, their composition, jurisdiction, and sentencing powers. The author notes that Thailand has two supreme courts, one civilian and the other military. This is not unlike the American system, except that in Thailand there is no way to challenge a decision of the Military Supreme Court in the civilian Supreme Court, even by collateral attack.

The third and last article is one of the few writings ever published in the *Review* which truly has a comparative law format and is not primarily a description of a foreign legal system. Lieutenant Colonel Amnon Straschnow of the Israeli Defense Forces writes about the American court-made rule which requires exclusion of evidence obtained as a result of an illegal search or confession. He describes Israeli practice in this area of law, and criticizes the American rule as unreasonably hampering the prosecution of the guilty while adding nothing of value to the protection of the innocent.

²Baxter, "Modernizing the Law of War," 78 Mil. L. Rev. 165 (fall 1977).

³Major General Walter D. Reed, USAF, Professor Telford Taylor, and Professor W. Thomas Mallison, panelists, "Law of War Panel: Directions in the Development of the Law of War," 82 Mil. L. Rev. 3 (fall 1978).

⁴Gehring, "Loss of Civilian Protections Under the Fourth Geneva Convention and Protocol I," 90 Mil. L. Rev. 49 (fall 1980); Peirce, "Humanitarian Protection for the Victims of War: The System of Protecting Powers and the role of the ICRC," 90 Mil. L. Rev. 89 (fall 1980).

1981] **INTERNATIONAL, COMPARATIVE LAW SYMPOSIUM**

The *Military Law Review* is pleased to present these three interesting articles to our readership. They are valuable additions to the body of military legal literature.

PERCIVAL D. PARK
Major, JAGC, U.S. Army
Editor, *Military Law Review*

ORGANIZATION FOR BATTLE: THE JUDGE ADVOCATE'S RESPONSIBILITY UNDER ARTICLE 82 OF PROTOCOL I TO THE GENEVA CONVENTIONS*

by Major Levator Norsworthy, Jr. **

The Geneva Conventions of 1949 concerning protection for the victims of war have been expanded by two Protocols completed in 1977. Protocol I focuses on victims of international armed conflicts, and Article 82 thereof requires states parties to the Protocol to provide legal advisors to their military commanders. Major Norsworthy discusses the implications of Article 82 for judge advocates in the United States Armed Forces.

Under Article 82, judge advocates are required to advise commanders concerning the requirements of the law of war, and concerning dissemination of information to the troops about those requirements. While these are not completely new duties for American judge advocates, they will have to be performed in a more explicit and affirmative manner than before, with more and better prepared instructors.

*The opinions and conclusions expressed in this article are those of the author and do not necessarily represent the views of The Judge Advocate General's School, the Department of the Army, or any other governmental agency.

This article is based upon a paper written by the author in partial satisfaction of the requirements of the 28th Judge Advocate Officer Graduate (Advanced) Course, given at The Judge Advocate General's School, Charlottesville, Virginia, during academic year 1979-1980.

**JAGC, U.S. Army. Government Trial Attorney before the Armed Services Board of Contract Appeals, assigned to the Contract Appeals Division, U.S. Army Legal Services Agency, Falls Church, Va., 1981 to present. Served as Deputy Staff Judge Advocate, 2d Infantry Division, Camp Casey, Korea, and as Staff Judge Advocate, Combined Field Army (ROK/US), Korea, 1980-1981. Action officer in the Litigation Division, Office of The Judge Advocate General, The Pentagon, Washington, D.C., 1976-1979. B.S., 1970, University of Dayton, Dayton, Ohio; J.D., 1973, University of Cincinnati, Cincinnati, Ohio. Completed Judge Advocate Officer Basic Course, TJAGSA, 1973; Judge Advocate Officer Graduate Course, TJAGSA, 1980. Member of the Bars of Ohio and the District of Columbia.

The United States has signed both Protocols but has not yet ratified them. However, the Protocols have been ratified by, and are in force among, an increasing number of states, and are therefore part of the law of war. Major Norsworthy recommends that the United States Armed Forces prepare for American ratification now by making available the manpower and resources necessary to satisfy the requirements of Article 82.

I. PROTOCOL I: AN OVERVIEW

The protocols to the Geneva Conventions of 1949 are the culmination of a decade of international negotiation. They represent a direct outgrowth of the recognition by the world community of the need to reaffirm and expand the humanitarian principles of the 1949 Conventions in the face of numerous wars of insurgency and significant changes in battlefield technology.¹ Protocol I supplements the 1949 Geneva Conventions relating to the protection of the victims of war.² An example of the added protections afforded by Protocol I

¹ A 1968 United Nations General Assembly Resolution was passed requesting that the Secretary-General examine the

need for additional humanitarian international conventions or of possible revision of existing conventions to "ensure the better protection of civilians [and] prisoners [of war] . . . in all armed conflicts."

Resolution XXIII, Final Act of the International Conference on Human Rights, UN Doc. A/CONF 32/41, at 18 (1968).

² Geneva Convention for the Protection of War Victims (Armed Forces in the Field), Aug. 12, 1949, 3 U.S.T. 3114, T.I.A.S. No. 3362, 75 U.N.T.S. 31; Geneva Conventions for the Protection of War Victims (Armed Forces at Sea), Aug. 12, 1949, 3 U.S.T. 3217, T.I.A.S. No. 3363, 75 U.N.T.S. 85; Geneva Convention for the Protection of War Victims (Prisoners of War), Aug. 12, 1949, 3 U.S.T. 3316, T.I.A.S. No. 3364, 75 U.N.T.S. 135; Geneva Convention for the Protection of War Victims (Civilian Persons), Aug. 12, 1949, 3 U.S.T. 3516, T.I.A.S. 3365, 75 U.N.T.S. 287.

The text of the two 1977 Protocols may be found in Department of Army Pamphlet No. 27-1-1, Protocols to the Geneva Conventions of 12 August 1949 (1 Sep. 1979) [hereinafter cited as DA Pam 27-1-1]. Protocol I concerns "the Protection of Victims of International Armed Conflicts." DA Pam 27-1-1, at 3. Protocol II, a much shorter document, deals with "the Protection of Victims of Non-International Armed Conflicts." DA Pam 27-1-1, at 89. Both Protocols enter into force for ratifying or acceding states six months after deposit of the states' instruments of ratification or accession. Art. 95, Protocol I, DA Pam 27-1-1, at 70; Art. 23, Protocol II, DA Pam 27-1-1, at 99.

can be seen in Article **82**, entitled Legal Advisors. That article requires legal advisors to be available to advise military commanders on the application of the Conventions and the Protocol and on the instruction to be given to members of the armed forces. This article discusses the impact of Article **82** upon the role of the judge advocate in providing legal advice and service to the command on law-of-war matters.

Article **82** to Protocol I represents a novel approach to the problem of assuring that members of military units consider the applicability of the Conventions and the Protocols during the conduct of tactical operations. Article **82** accomplishes this by providing the commander with a legal advisor whose purpose is to advise him of the Conventions and Protocol as they relate to a particular operation and by requiring that the advisor provide appropriate advice on the instruction to be given to members of the command on the law of war. Specifically, Article **82** provides that:

The High Contracting Parties at all times, and the Parties to the conflict in time of armed conflict, shall ensure that legal advisers are available, when necessary, to advise military commanders at the appropriate level on the application of the Conventions and this Protocol and on the appropriate instruction to be given to the armed forces on this subject.

The drafters of Article **82** determined that inclusion of this provision would promote the observance of the Conventions and the Protocols by the military community.³ The philosophical basis for its in-

The two Protocols were negotiated at a Diplomatic Conference held in Geneva, Switzerland, between 1974 and 1977. The Conference adopted the Protocols on 10 June 1977 and opened them for signature on 12 December 1977. DA Pam 27-1-1, at foreword. The United States signed the Protocols on 12 December 1977, subject to three understandings. See DA Pam 27-1-1, at 138-39. The United States Senate has not yet given its advice and consent to ratification of the Protocols. As of the beginning of 1981, seventeen states had ratified Protocol I, and sixteen had ratified Protocol 11. Int'l Rev. of the Red Cross, No. 220, at 19 (Jan.-Feb. 1981).

³The original draft of Protocol I was prepared by the International Committee of the Red Cross with the aid of two conferences of international government experts held during 1971 and 1972. Article **82** appeared therein as Article 71 *bis*, and in relevant part provided:

clusion within the Protocol can be discerned from the words of Mr. Martin of the International Committee of the Red Cross, who stated that:

There could be no doubt that many violations of humanitarian law arose from unfamiliarity with the rules involved. Many experts considered that the Geneva Conventions and draft Protocols would be better applied if the commanders of military units were accompanied by legal advisors whose main task would be to ensure that the armed forces received appropriate instruction and to answer any questions put to them.⁴

Thus for the first time international law will specifically require that the commander be provided with a legal advisor who will be available to advise him of law-of-war implications during the planning and execution of tactical operations. Further, the commander's judge advocate will be available to assist in instructing the members of the command on the Conventions and the Protocols. Article 82 thus provides clear guidance to the commander which, if implemented, should result in heightened sensitivity to the provisions of the Conventions and the Protocol.

Article 82 can be characterized as a procedural provision in that it obligates the military parties to seek and obtain legal advice relative to the Conventions and the Protocol, and to supervise appropriate law-of-war instruction. In order to fully appreciate the commander's responsibility as codified in Protocol I, one must review other provisions of the Protocol which provide the commander with substantive guidance and which affect the commander's duty and the scope of the advice rendered by the judge advocate.

The significant provision dealing with the commander's duty under the Protocol is found in paragraph 2 of Article 87 which deals

The High Contracting Parties shall employ in their armed forces, in time of peace as in time of armed conflict, qualified legal advisors who shall advise military commanders on the application of the Conventions and the present Protocol and who shall ensure that appropriate instruction be given to the armed forces.

⁴Official Records of the Diplomatic Conference on Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Vol. VIII, p. 390 (1977).

with duty of commanders.⁵ In pertinent part it provides:

In order to prevent and suppress breaches, High Contracting Parties and Parties to the conflict shall require that, commensurate with their level of responsibility, commanders ensure that members of the armed forces under their command are aware of their obligations under the Conventions and this Protocol.

Paragraph 2 of Article 87 establishes that the commander is responsible for taking appropriate measures to ensure that the personnel of his command are aware of their responsibilities under the Conventions and the Protocol. Pursuant to this provision, the commander should require that members of his staff establish programs which guarantee dissemination of the Conventions and the Protocols.⁶ In implementing the requirement of paragraph 2, Article 87,

⁵ Article 87, Protocols to the Geneva Conventions of 12 August 1949, provides that:

1. The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and report to competent authorities breaches of the Conventions and of this Protocol.

2. In order to prevent and suppress breaches, High Contracting Parties and Parties to the conflict shall require that, commensurate with their level of responsibility, commanders ensure that members of the armed forces under their command are aware of their obligations under the Conventions and this Protocol.

3. The High Contracting Parties and Parties to the conflict shall require any commander who is aware that subordinates or other persons under his control are going to commit or have committed a breach of the Conventions or of this Protocol, to initiate such steps as are necessary to prevent such violations of the Conventions or this Protocol, and, where appropriate, to initiate disciplinary or penal action against violators thereof.

⁶ Article 83 requires that the provisions of the Conventions and the Protocols be disseminated as widely as possible. A significant additional requirement under the Protocol is that information about the protections afforded by the Conventions and the Protocol be disseminated to the civilian population as well as the military community. Further, Article 83 restates a significant part of the implementation of the law of war set forth in Article I of the Fourth Hague Convention. That document provides that the Contracting Parties "shall issue instructions to their

the commander will be taking appropriate steps to meet his duty to “control, to prevent and, where necessary, to suppress and report to competent authorities breaches of the Conventions and of the Protocol.”⁷

Protocol I not only places an affirmative duty upon the commander to suppress and prevent breaches of the Conventions and the Protocol, it also requires him to personally intervene to limit breaches by his subordinates. Further, it holds him liable for their breaches in those instances in which he fails to take appropriate action in consonance with the Conventions and the Protocol. Article 86 of the Protocol concerns the commander’s failure to act. It requires the parties to the conflict to suppress all breaches (grave or otherwise) of the Conventions and the Protocols which result from a “failure to act when under a duty to do so.”⁸ Significantly, para-

armed forces which shall be in conformity with the Regulations respecting the Laws and Customs of War on Land annexed to the present Convention.” Article 83 is consistent with the four Geneva Conventions of 1949, which specifically require dissemination of the law of war. Article 83 states as follows:

1. The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the Conventions and this Protocol as widely as possible in their respective countries and, in particular, to include the study thereof in their programmes of military instruction and to encourage the study thereof by the civilian population, so that those instruments may become known to the armed forces and to the civilian population.
2. Any military or civilian authorities who, in time of armed conflict, assume responsibilities in respect of the application of the Conventions and this Protocol shall be fully acquainted with the text thereof.

⁷ Article 87, para. 1, at note 5, *supra*.

⁸ Article 86, Protocol I to the Geneva Conventions of 12 August 1949, provides that:

1. The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so.
2. The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances

graph 2 of this article codifies the existing law-of-war norm relating to command responsibility.⁹ Specifically, paragraph 2 of Article 86 provides that:

The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the

at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.

⁹ Article 86 does not represent the establishment of a new standard of legal responsibility for the commander, as this duty already exists under current law. For example, paragraph 501 of U.S. Army Field Manual 27-10, *The Law of Land Warfare*, provides that:

In some cases, military commanders may be responsible for war crimes committed by subordinate members of the armed forces, or other persons subject to their control. Thus, for instance, when troops commit massacres and atrocities against the civilian population of occupied territory or against prisoners of war, the responsibility may rest not only with the actual perpetrators but also with the commander. Such a responsibility arises directly when the acts in question have been committed in pursuance of an order of the commander concerned. The commander is also responsible if he has actual knowledge, or should have knowledge, through reports received by him or through other means, that troops or other persons subject to his control are about to commit or have committed a war crime and he fails to take the necessary and reasonable steps to insure compliance with the law of war or to punish violators thereof.

The legal standard embodied within the paragraph emanated from the seminal case involving Japanese General Yamashita in *In Re Yamashita*, 327 U.S. 1 (1946). See also Parks, *Command Responsibility for War Crimes*, 62 Military Law Review 1 (1973). William Hays Parks is now a civilian attorney with the International Affairs Division, Office of The Judge Advocate General, U.S. Army, at the Pentagon, Washington, D.C. He was formerly a judge advocate on active duty in the United States Marine Corps. The article here cited was a thesis he wrote while he was a student in the 21st Judge Advocate Officer Advanced (Graduate) Course, at The Judge Advocate General's School, Charlottesville, Virginia, during academic year 1972-73. For this article, Mr. Parks received the TJAGSA Alumni Association Writing Award for 1973, and also the Navy League's Navy Judge Advocate Writing Award for 1974.

Mr. Parks was an instructor in criminal law and international law at The Judge Advocate General's School from 1973 to 1976. His most recently published article, which should be of interest to readers of the present article, is *The Law of War Adviser*, 31 JAG J. 1 (1980). The JAG Journal is a law review published semi-annually by the Office of The Judge Advocate General of the Navy.

case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.

Article 86 clearly announces that the superior will be held responsible in those instances where he knew or should have known about real or potential breaches of the law of war but failed to act.

In addition to providing commanders and their lawyers with standards and procedures which govern their adherence to the law of war, Protocol I goes further. Article 57, entitled Precautions in Attack, sets forth uniform guidance for the commander on his responsibility to civilians and to the civilian population in carrying out attacks against military objectives.¹⁰ Article 57 codifies the rule of

¹⁰ Article 57, Protocol I to the Geneva Conventions of 12 August 1949, provides that:

1. In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.

2. With respect to attacks, the following precautions shall be taken:

(a) those who plan or decide upon an attack shall:

(i) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are, not subject to special protection but are military objectives within the meaning of paragraph 2 of Article 52 and that it is not prohibited by the provisions of this Protocol to attack them;

(ii) take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects;

(iii) refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(b) an attack shall be canceled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof,

proportionality and, for the first time, gives law-of-war guidance to commanders during the planning stage of tactical operations. Paragraph 3 of Article 57 states:

When a choice is possible between several military objectives for obtaining a military advantage, the objective to be selected shall be that the attack on which may be expected to cause the least danger to civilian lives and civilian objects.

The articles contained within Protocol I not only amplify existing protections contained within the Geneva Conventions of 1949 but provide innovative substantive guidance to field commanders. The novel approach of the Protocol in providing the commander with a legal advisor should serve to limit the scope of suffering and prevent the imposition of war crimes upon the victims of war. The provisions of the Protocol and Article 82 also provide the judge advocate with an opportunity to significantly increase the impact he may have on influencing the command to observe and to enforce the law of war.

11. ARTICLE 82 AND THE JUDGE ADVOCATE'S MISSION

Article 82 of Protocol I sets forth a twofold mission for the judge advocate: advice to the commander on law-of-war matters, and ad-

which would be excessive in relation to the concrete and direct military advantage anticipated:

(c) effective advance warning shall be given of attacks which may effect the civilian population, unless circumstances do not permit.

3. When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected shall be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects.

4. In the conduct of military operations at sea **or** in the air, each Party to the conflict shall, in conformity with its rights and duties under the rules of international law applicable in armed conflict, take all reasonable precautions to avoid losses of civilian lives and damage to civilian objects.

5. **No** provision of this article may be construed as authorizing any attacks against the civilian population, civilians **or** civilian objects.

vice on implementing the dissemination requirements of the Conventions and the Protocols. Accomplishment of each mission will require the efficient utilization of very limited personnel resources by senior judge advocates.

Utilization of the legal advisor under combat conditions will be difficult if the legal advisor has not been integrated within the operations and plans team during peacetime. Permitting legal advisors to participate in peacetime tactical training will familiarize the commander and the lawyer with their respective responsibilities and permit the two to establish procedures designed to meet the Article 82 requirement. Peacetime implementation will also permit the legal advisor to have the time to review the proposed rules of engagement of his or her organization and to actively participate in the formulation of future operations plans. This should reduce the conflicts that would otherwise occur if the advisor is suddenly thrust into the operations and planning section upon commencement of hostilities. Accordingly, it is imperative that the legal advisor be included at the highest level of planning at the earliest feasible time.

The officer selected for the job must be fully conversant with contemporary military thought and language, and aware of the capabilities of the weapons systems at the disposal of his or her commander. It goes without saying that the legal advisor should be of sufficient rank and experience in order to meet those requirements. These factors, though positive attributes necessary for success as a law-of-war legal advisor, are at once transformed into personnel limitations upon implementation of the program. The level of maturity and experience required for the position will eliminate the majority of the judge advocates assigned to the TOE division. For example, the SJA section of a typical TOE division calls for fifteen officers, of which at least eight serve in the grade of captain.¹¹ This leaves seven officers with the rank which would indicate sufficient maturity and military experience necessary for the successful accomplishment of this mission.¹² The additional desired requirement

¹¹Table of Organization and Equipment F-4H0, Change 17, 20 April 1979.

¹²Even if the captains in question possess the desired level of maturity and military experience required of the Article 82 legal advisor, the staff judge advocate will, nevertheless, be faced with the problem of whether a significant number of these officers would be available for assignment because of the impact of the es-

of extensive training in the law of war would also serve to eliminate many other officers within the primary zone of consideration. Thus, the very attributes necessary for successful implementation of this program limit the pool of individuals from which the senior judge advocate can select one to serve as the Article 82 advisor.

Given the limitation on manpower, the author would recommend that implementation of the Article 82 legal advisor program be retained at division level or higher. One officer possessing the required attributes could then be released for training and then utilized as the reviewing officer for the division rules of engagement. Strong arguments can be advanced that the Article 82 officer should be with the division maneuver elements. However, limited personnel resources prevent, in the author's opinion, the deployment of sufficient numbers of judge advocate officers possessing the required attributes. Moreover, efficient use of communications equipment should obviate the necessity for deployment of legal advisors in forward areas.¹³

Legal advisors are not unfamiliar to American military commanders. Our challenge as judge advocates is to further serve the commander and humanity by logically expanding the scope of our advice to our clients to include matters covered in the Geneva Conventions and the Protocol, and to advise upon the instruction given to members of the units we serve. Article 82 provides the challenge and we as a Corps must be equal to the task.

111. ADVICE ON DISSEMINATING THE LAW OF WAR

The second prong of the judge advocate's mission under Article 82 is that he or she must advise the command on the appropriate in-

tablishment of the Army's Trial Defense Service. Assignment of officers to TDS results in loss of control by local staff judge advocates over some "JA officer spaces to, . . . USALSA." See letter, JALS-TD(M), Washington, D.C., 3 July 1979, to TRADOC, MACOM's, at 1, para. 3.

¹³The noted commentator, Colonel G.I.A.D. Draper, has suggested that the "legal advisor is likely to be more usefully employed at a distance, and at a level of command where he is detached from the individual tactical incident. It is not a question of personal safety but of the efficient discharge of his functions." See Draper, "Role of Legal Advisors in Armed Forces," 202 *International Review of the Red Cross* 6, 14 (Jan.-Feb. 1978).

struction to be given on the Conventions and the Protocol. Unlike providing Article 82 law-of-war advice in a tactical setting, judge advocates have traditionally provided input into the law-of-war training given to United States personnel.¹⁴ Indeed, the Department of Defense Commentary relating to Article 82 observed that "United States practice is already in compliance with this article [82]."¹⁵ Moreover, in response to the International Committee of the Red Cross Memorandum on Implementation and Dissemination of the Geneva Conventions of 1949, dated August 15, 1972, the United States highlighted the role played by the judge advocate as instructor on the law of war by stating that "classroom instruction and discussion [on the Hague and Geneva Conventions] are presented by a qualified judge advocate and a combat commander."¹⁶ Thus, the judge advocate has played a significant role in shaping the nature and extent of the training given to U.S. service personnel in the law of war. However, a closer examination of the record indicates that the law-of-war training given in the past may not have been as effective as portrayed in the official positions taken by our Government.

Present Department of Defense policy requires that the Armed Forces of the United States observe and enforce the law of war.¹⁷ In meeting this requirement, the Department of Defense has required the individual services to implement specific programs designed to "prevent violations of the law of war."* In keeping with this direction, the Department of the Army has issued Army Regulation No. 350-16, which governs training under the Geneva Conventions of 1949 and the Hague Convention No. IV of 1907. The stated purpose of the regulation is to "present the objectives, re-

¹⁴ See para. 8a(2), Army Regulation 350-216, Training — The Geneva Conventions of 1949 and Hague Convention No. IV of 1907 (1975).

¹⁵ See Department of Defense Law of War Working Group Review and Analysis of Protocols I and II adopted by the Diplomatic Conference on International Humanitarian Law at I-82-2 (1977).

¹⁶ Report Submitted by the International Committee of the Red Cross, "Implementation and Dissemination of the Geneva Conventions" at 34 (1973).

¹⁷ Dep't of Defense Directive No. 5100.77, DOD Law of War Program, sec. C1 (10 July 1979).

¹⁸ *Id.* at sec. C2.

sponsibilities and training requirements pertaining to the instruction of U.S. Army personnel in the Conventions. . . ." ¹⁹ In meeting this objective, the regulation provides that The Judge Advocate General will be "responsible for preparation of training literature to support [law of war] training." ²⁰ Moreover, in the area of formal instruction, The Judge Advocate General is required to provide judge advocates to assist in formal classroom presentation of the law of war. ²¹

Review of the applicable regulations and directives demonstrates that the judge advocate has been involved with the training given the individual soldier in the law of war. However, the judge advocate's participation has been primarily limited to formal classroom instruction. ²² The limited impact of classroom instruction may provide the explanation for violations of the law of the war by American personnel in the My Lai incident during the Vietnam conflict. ²³ Additionally, a recent report on Protocols I and II by the Strategic Studies Institute of the U.S. Army War College indicates that law-of-war instruction at U.S. Army Service Schools is a minor portion of the total curriculum in each school. ²⁴

¹⁹ Note 14, *supra*, at para. 2.

²⁰ *Id.* at para. 4c.

²¹ *Id.* at para. 8a(2).

²² See Herbert D. Williams, The Army Lawyer as an International Law Instructor: Dissemination of the Conventions (March 1976) (unpublished thesis available in the library of The Judge Advocate General's School, U.S. Army, Charlottesville, Virginia.) The author, an Army JAGC lieutenant colonel, was a student in the 24th Judge Advocate Officer Advanced (Graduate) Course, academic year 1975-76, when he wrote the thesis.

Colonel Williams comments on the cavalier attitude of some law-of-war instructors and on the negative effect this attitude has on the recipients of their training. The experiences set forth suggest that the effectiveness of platform instruction in the law of war may suffer from a lack of attention to detail sometimes demonstrated by members of the J.A.G. Corps.

²³ See *United States v. Calley*, 46 C.M.R. 1131 (A.C.M.R. 1973); 22 C.M.A. 534, 48 C.M.R. 19 (1973).

²⁴ The Judge Advocate General's School, U.S. Army, at Charlottesville, Virginia, provides instruction in the law of war in a number of different courses. Most of these courses are intended for attorneys who are active duty or reserve judge ad-

These revelations suggest that the present effort expended by the Department of the Army on instruction in the law of war is insufficient both in the time devoted to the subject, and its overall im-

vocates in the various services. Two courses are available to non-attorney officers. The senior officers' legal orientation course provides instruction in the law of war, among many other subjects, for senior commanders, principal staff officers, and other non-attorney officers in similar positions. The law of war workshop is available to judge advocates and government civilian attorneys, and also non-attorney officers whose work involves them in any significant way in law-of-war matters, including work as instructors. See The Judge Advocate General's School Annual Bulletin 1980-1981, at 6, 11, 13, 14, 19, 35, and 38.

The Report on Protocols I and 11 — International Humanitarian Law Applicable to Armed Conflict (prepared by the Strategic Studies Institute, U.S. Army War College) (20 March 1979), indicates at appendix L that, as of the fall of 1978, the following emphasis was placed on law-of-war instruction:

US ARMY SERVICE SCHOOL LAW OF WAR INSTRUCTION

(As of Fall 1978)

Present Training

<i>Service School</i>	<i>Basic Course</i>	<i>Advanced Course</i>
Infantry School	2 Hours	2 Hours
Armor School	2 Hours	3 Hours
Air Defense Artillery School	3 Hours	4 Hours
Field Artillery School	40 Min (Film)	0
Engineer School	2 Hours	0

Planned Training

A Junior Officer Legal Orientation Course is planned for all basic and advanced service schools, Reserve Officer Training Courses and Officer Candidate School. The course will consist of a five-hour block of legal instruction with two hours devoted to Law of War.

Command and General Staff College

Present Law of War Training: None
Planned Law of War Training: None

Army War College

Present Law of War Training: None

(Voluntary advanced courses are offered dealing with international affairs and international law which touch upon Law of War.)

Planned changes to Law of War Training: None

pact upon the Army as a whole. Unless positive and innovative action is taken to fully integrate law-of-war instruction into the core curriculums of the respective service schools, the potential for further My Lai's will remain.

Article 82 provides a fresh opportunity to augment the pre-existing law-of-war training policy announced in AR 350-216. Implementation of Article 82 will place the judge advocate in close and continuous coordination with the operations and plans team. In fulfilling his mission to advise the command on law-of-war matters, he or she will be in a position to suggest that specific problems relating to the law of war be inserted in planned tactical exercises. The judge advocate's role as a legal advisor on training will likewise place him or her in a position to begin to influence the commanders to integrate work under the law of war into tactical training exercises. Utilization of the judge advocate in this capacity will be consistent with stated Department of the Army policy on training in the law of war. This policy provides that law-of-war instruction be "integrated in all tactical training and related subjects when possible."²⁵ A recent Army publication, Training Circular 27-10-1, entitled "Selected Problems in the Law of War," contains thirty-seven case studies involving the application of law-of-war principles in tactical situations. The individual factual situations are capable of being integrated into ongoing field and command training exercises. The materials contained in TC 27-10-1 should provide the judge advocate with the necessary tools to fashion realistic and relevant law-of-war problems which will be easily and realistically incorporated into future exercises.

Given the lack of impact of the classroom lecture, the field training exercise provides the most realistic vehicle available to the commander to teach the law of war today. Moreover, the judge advocate will be able to maximize his or her impact upon the command he or she serves through the use of the integrated exercise, because the entire command (from commander to and through the individual soldier) will be able to participate in the law-of-war exercise. One need only compare that impact with the limited impact of the classroom setting and it will be abundantly clear that the integration of law-of-war instruction into field training exercises will produce far greater interest and retainable results.

²⁵ Note 14, *supra* at para. 8c(1).

IV. CONCLUSIONS

Article 82 of Protocol I provides the world community with a unique opportunity to demonstrate its commitment to the precepts of humanitarianism as contained within the Conventions. A noted commentator has observed that Article 82 was drafted "...with a measure of flexibility and pragmatism which leaves little excuse for ignoring it."²⁶ The challenge of Article 82 must be accepted and implemented by U.S. forces. If implementation is to occur, the judge advocate must be in the forefront of the effort to integrate law-of-war concerns into the tactical planning phase of armed training.²⁷ In order to accomplish this new mission, the judge advocate will be required to elevate the commitment shown to the law of war both in the SJA office and by the commander and operational staff.

This article has presented a number of thoughts on the duty of the judge advocate in implementing Article 82 and how effective application of its provisions could serve the interests of our Army and humanity. However, in the final analysis only the individual judge advocate's dedication to both his or her professional duty and to the precepts of humanitarianism will transform the provisions of Article 82 from empty words to bold deeds.

²⁶Note 13, *supra* at p. 17.

²⁷The United States became a signatory to the Protocols on 12 December 1977, subject to three understandings (not herein relevant). In order for implementation of the treaties to occur, the Senate must first give its advice and consent to ratification. Note 2, *supra*. The Departments of Defense and State are presently preparing recommendations on the Protocols for consideration by the Senate during its deliberations on the treaties.

THE ORGANIZATION OF MILITARY COURTS IN THAILAND*

by Lieutenant Colonel Suthee Charoonbara **

In this article, the author, a Thai judge advocate, describes the military justice system of the Kingdom of Thailand. Emphasis is placed on discussion of the various types of courts, both trial and appellate, their composition, jurisdiction, and sentencing powers. He describes the system as it has been since reforming legislation was enacted in 1955.

The author notes that the Thai judicial system is capped by two separate and independent supreme courts. The civilian sector has a Supreme Court, analogous with the United States Supreme Court.

*The opinions and conclusions presented herein are those of the author and do not necessarily represent the views of The Judge Advocate General's School, U.S. Army; the United States Department of the Army; any other agency of the United States Government; or any agency of the Kingdom of Thailand.

This article is based upon a thesis written by the author while he was a member of the 27th Judge Advocate Officer Graduate (Advanced) Class at TJAGSA, Charlottesville, Virginia, during academic year 1978-79. The article updates two previous articles on Thai military law. These are *The Military Judicial System of Thailand*, by Major General Samran Kantapraha, then Vice Judge Advocate General of the Royal Thai Army and a member of the Military Supreme Court, published at 14 Mil. L. Rev. 171 (1 Oct. 1961); and *The Military Judicial System of Thailand*, by Lieutenant General Sming Tailangka, Judge Advocate General, Ministry of Defense, Bangkok, Thailand, published at 64 Mil. L. Rev. 151 (spring 1974).

Special thanks are given to Professor Walter L. Williams, Jr., for his assistance in editing the article. Professor Williams has been a member of the faculty of the Marshall-Wythe School of Law, College of William and Mary, Williamsburg, Virginia, since 1972. He served on active duty in the U.S. Army Judge Advocate General's Corps from 1967 to 1972, and is currently a mobilization designee to the JAG School, with the rank of lieutenant colonel, USAR.

**JAGC, Royal Thai Army. During 1978, prior to coming to the JAG School as a student, the author was a prosecutor advisor, Military Prosecution Division, JAG Department, in Thailand. LL.B., 1964, Chulalongkorn University; LL.M., 1967, Southern Methodist University, Dallas, Texas. Graduate, April 1970, 55th Judge Advocate Officer Basic Course, TJAGSA, Charlottesville, Virginia. Member of the Thailand Bar Association.

There also exists a Military Supreme Court, analogous with the United States Court of Military Appeals except that there is no mechanism for challenging a decision of the Military Supreme Court in the civilian Supreme Court. The author recommends that this be changed, and that one unified Supreme Court be established for both the military and civilian judicial systems together. This would prevent divergent interpretation and application of those portions of the law which apply to civilians and military personnel alike.

The following article updates two articles on Thai military law published previously in the Military Law Review, at 14 Mil. L. Rev. 171 (1 Oct. 1961) and at 64 Mil. L. Rev. 151 (spring 1974).

I. INTRODUCTION

A. HISTORICAL BACKGROUND

In 1955, the Act on the Organization of Military Courts (A.O.M.C.) (B.E. 2498)¹ established the modern military court system in Thailand, to try military personnel who fail to comply with military criminal law and other laws of a criminal nature. However, Thai military courts have existed for nearly two hundred years. From the first to the fifth reign of the Chakri Dynasty (1782-1892), courts with various names and functions were attached to governmental departments and ministries. One of these, the "Defense Court," was vested with jurisdiction over all military personnel. The Defense Court could be considered as the first official Thai military court. It could also try civilians. The reason for the Defense Court's jurisdiction over civilians was that Thailand had frequent wars with other countries sharing common borders, and the Defense Ministry, to which the Defense Court belonged, had responsibility for both military and civilian administration.²

¹Hereinafter cited as A.O.M.C. in text and notes. The abbreviation "B.E." denotes the Buddhist Era, which commenced in 543 B.C. Thus the date 1 Jan. B.E. 2498 equates to 1 Jan. A.D. 1955, a difference of 543 years.

²The exact date of the commencement of the jurisdiction of the Ministry of Defense is unknown. It started sometime during the first reign of the Chakri Dynasty. Judge Advocate General's Department, Thai Ministry of Defense, *The Thai Military Courts* (18 Nov. B.E. 2520).

In 1802, the government passed the "*Tra Sam Duang*" law.³ This law provided for the punishment of soldiers who committed offenses on the battlefield. It authorized the commander to decide whether to take disciplinary action or to order trial by military court. The law also specified trial procedures and how and when the court would be constituted. In 1804, the government issued legislation called the "Rebellion" law, which was a part of the "Law of the Three Great Seals."^{3A}

A major development in the Thai military court system occurred in 1891, when King Rama V established the Ministry of Justice. With the new organization of the Ministry of Justice, all courts except the Defense Court were placed under the authority of the Ministry of Justice. The Defense Court still remained under the Ministry of Defense. During this period, the Thai courts were divided into civilian courts and military courts. In 1907 and 1908, the Act on

³*Tra Sam Duang* means the "three circles;" each circle stands for one authority, (1) a commander, (2) a legal officer, and (3) an officer having authority to force men to go to war. These three kinds of officers constituted a quorum for a military court.

^{3A}In 1767, the Burmese took Ayudhya after a long seige. The whole city was laid waste. Thousands of people were killed, injured, or carried away as prisoners to Burma. Practically all the irreplaceable official records, annuals, legal documents, and literature were destroyed by fire. It is recorded that the text of only one-tenth of the legislation in force in the last days of Ayudhya was saved from the remains of the late capital. Thereafter, because Thailand was constantly at war, almost forty years passed before the law was finally replaced and revised.

In 1805, King Rama I (1782-1806), the founder of Bangkok, appointed a royal commission to overhaul the law of the land. A monumental effort was made to review the whole law in the light of then-contemporary notions and learning. The revised Code of 1805, commonly known as the "Law of the Three Great Seals," was framed with all the skill and ingenuity of the day. The Code was more than a mere restatement of the prevailing penal and civil law surviving from the debacle of 1767. The new Code contained not only the Dhammasattham of Ayudhya but also subsequently issued royal decrees and edicts. Among its main features were sections on the law of evidence, the law governing the ordeals by fire and water, the law of appeals, and the law of husband and wife. The Code was a unique achievement, and practical in character. The greater part of it remained applicable throughout the Kingdom for the next one hundred three years. Thailand Official Year Book 1964, at 240-41.

the Organization of Army Courts (B.E. 2450)⁴ and the Act on the Organization of Navy Courts (B.E. 2451) established separate Army courts and Navy courts. In 1934, the Act on the Organization of Military Courts (B.E. 2477) merged the Army and the Navy courts into one military court system. In 1955, that Act was repealed and replaced by the A.O.M.C., which substantially reorganized the Thai military court system. The A.O.M.C. basically established the present form, structure and system of the Thai military courts.

B. REASONS FOR EXISTENCE OF THE THAI MILITARY COURT SYSTEM

The reasons for the existence of a military court system separate from the civilian court system in Thailand undoubtedly are similar to justifications for separate court systems in other countries. However, a brief recitation of those reasons is appropriate.

1. To allow the commander an opportunity to closely participate in the trial of criminal offenses committed by his soldiers.

Military members are also citizens of the country. In this respect they are subject to all levels of civilian law just as are civilians. However, since military personnel are primarily responsible for protecting the highest of national institutions, the Nation, the sacred Buddha's Religion, and the King, they are especially required to observe military discipline, rules, regulations and law. Normally, when they fail to comply with military regulations, rules, or discipline, the commander is authorized to exercise military disciplinary action against them. However, sometimes their criminal offenses require more than the disciplinary measures exercisable by the

⁴In 1922, the Act on the Organization of Army Courts (B.E. 2465) repealed and replaced the 1907 legislation.

King Rama V, personal name Chulalongkorn, reigned from 1868 to 1910 and is famous for his extensive and successful efforts to modernize Siamese government and society, and to open his country to western ideas. He continued the work started by his father, Rama IV, personal name Mongkut, king from 1851 to 1868. Rama IV is known to Americans as the monarch in the Rodgers and Hammerstein musical, "The King and I" (1951), released as a film in 1956 by 20th Century-Fox, starring Deborah Kerr and Yul Brynner. "The King and I" was based on a book, "Anna and the King of Siam," by an English author.

commander. At this point military law requires that their cases go to a military court. One purpose of military law, at this point, is to allow the commander an opportunity for close and full participation in the trial of the case, so that he will know the nature and cause of the offense and will be capable of correcting any deficiencies in his command.

2. More effective and speedy trial.

Military courts are able to conduct cases more effectively and promptly than civilian courts in many different situations. Past practices have clearly proved that in wartime or when martial law was in effect, military courts' trials were much speedier and more effective, as circumstances required them to be. In such circumstances, prompt trial (which discipline requires) could not be achieved using the ordinary procedures in the civilian courts. Swift and fair resolution of criminal cases is critical for the immediate restoration of public peace and order.

3. Necessity of military courts for troops while on combat duty aboard.

Combat is one major mission of the military. Sometimes military men are sent on combat missions on the high seas or abroad. Accordingly, the establishment of military courts that can try criminal cases outside Thailand is necessary.

4. To maintain the commander's disciplinary power at the fullest capacity.

Discipline is the heart of the military, the most effective means of control and organization of armed forces. No command at all would exist without the commander's discipline. Under Thai military law, the commander is authorized to exercise his disciplinary power to varying degrees when his soldiers fail to comply with the law or disciplinary rules. He may employ "disciplinary measures"⁵ if the soldier's misconduct is not overly serious, or he may give "disciplinary

⁵ Disciplinary measures are minor administrative punishments lawfully exercised by the commander other than disciplinary punishments specified by military law. See note 6, *infra*.

punishment”⁶ if he considers it appropriate. The commander may refer the case to a military court if he believes that the soldier’s alleged misconduct is of a degree that disciplinary measures are insufficient for disciplinary needs in the unit. This is true even if such misconduct does not constitute a criminal act under the civilian criminal laws. Military law authorizes the commander to refer a case of disciplinary violation to a military court in order to maintain discipline.

The extent to which a commander can exercise his disciplinary power is a matter solely within the commander’s discretion. However, all decisions have to be made in conformity with military law, rules, regulations and acceptable standards of practice. In this respect, the Law on Military Discipline sets forth a number of instances demonstrating when and how military law, rules, and regulations should be considered to be violated. These examples, specified by law, are used as guidelines by commanders to conform to a common standard of judgment in taking action against disciplinary violations.

In the Thai legal system, military law is considered part of the law of the land. Its enactment occurs in the same manner as for civilian law. Although it deals mainly with military members, some specific provisions authorize the military courts to try civilians under special circumstances.

C. PURPOSE OF STUDY

This study explains the organization of Thailand’s military courts.⁷ It describes the military court system and structure; discusses the jurisdiction of military courts at each level, and comments on particular points of interest in Thai military criminal pro-

⁶Disciplinary punishments are defined by Sections 8 and 9 of the Act on Military Discipline as follows: (1) reprimand, (2) extra duties, (3) restraint, (4) detention, and (5) confinement. Any other kind of disciplinary punishment is strictly prohibited and the commander may commit a criminal offense, if he tries to impose any other punishment.

⁷For earlier commentary on various aspects of the Thai military judicial system, see Tailangka, *The Military Judicial System of Thailand*, 63 Mil. L. Rev. 151 (1974); Kantaprapha, *The Military Judicial System of Thailand*, 14 Mil. L. Rev. 171 (1961).

cedure. In performing these tasks the study also raises, in the context of the Thai military court systems, some of the basic considerations of judicial policy involved in the functioning of a military court system in any country.

II. THE THAI MILITARY COURTS: GENERAL OVERVIEW

A. *THE ADMINISTRATION OF MILITARY COURTS*

All Thai military courts fall under the jurisdiction of the Ministry of Defense by virtue of the A.O.M.C., which was promulgated in conjunction with the Organization of National Administration Act.⁸ Under the A.O.M.C., the Judge Advocate General's Department, which belongs to the Office of the Under-Secretary of the Ministry of Defense, has the direct responsibility for supervising and directing the administrative work of all military courts including personnel commissioning, appointment, and transfer. The Minister of Defense, the Judge Advocate General, and all commanding generals at every level, may not interfere in a military court's proceedings, including the court's discretionary power in rendering judgments or orders. Military judges of all military courts are independent of any other institution's interference or control throughout the proceeding, in the same manner as civilian judges are free from such controls. Their independence in the trial and adjudication of the case has been guaranteed by each succeeding constitution of Thailand.

Although Thailand has had many governments in the past twenty years, most of which have been conducted by military figures, the King has always been the Head of State. Highly respected and loved by all his people, the King is the central figure who provides unity among the Thai people from all walks of life. In spite of the King's position as symbolic Head of State, with no executive power, every prime minister in the past has obediently and carefully listened to his advice and guidance concerning internal political matters and foreign affairs policies.

⁸The Organization of National Administration Act (B.E. 2477) provides in principle that the Ministry of Defense should have jurisdiction over military members only.

As for the military, the King's importance is even greater. He is the symbolic supreme commander of all the armed forces. The King authorizes the commissioning of every military officer. Appointments to and removals from judgeships in the Military Appeal Court and Military Supreme Court are made by royal permission. Moreover, all the military courts are convened in the name of the King.

B. THE SYSTEM OF MILITARY COURTS

Generally, Thai military courts are divided into three classes: The military courts of first instance, the Military Appeal Court, and the Military Supreme Court.

The military courts of first instance are of four types: provincial military courts, circle⁸ military courts, the Bangkok Military Court and unit military courts. This study discusses each type in section III. Cases are initiated in these military courts of first instance. Cases that are appealable will be appealed to higher courts, that is, the Military Appeal Court and the Military Supreme Court respectively.

The administration of justice within the military is separate and absolutely independent from civilian justice authority. At this point, those familiar with one supreme court system might find it somewhat strange that Thailand has two different highest courts in the country, that is the Military Supreme Court and the Civilian Supreme Court. The author comments on this particular aspect in section VII.

Apart from the ordinary classification of military courts, the organization of military courts may also be considered in terms of situations, *i.e.*, military courts in normal periods, military courts in abnormal periods,¹⁰ and courts-martial. The differences between the military courts in normal and abnormal periods are few, and are highlighted in cases where a serious offense in the Military Criminal Code is charged regardless of whether some other offense also is

⁸A "circle military court" is a regional court.

¹⁰The term "abnormal periods" means wartime, times of fighting, or when martial law is enforced.

charged, in cases where an offense against national security under Sections 107 to 129¹¹ of the Penal Code is charged regardless of whether some other offense also is charged, and in cases where an offense against the Anti-Communist Activities Act is charged regardless of whether some other offense also is charged.

C. THE JURISDICTION OF THE MILITARY COURTS

1. *Jurisdiction as to territory.*

Since the territorial jurisdiction of the military courts corresponds with the military geographical area, it is necessary to understand the subdivision of the "military area" in Thailand. The military area is geographically divided into different "military provinces" and "military circles."

Thailand has divided her geographical area into 72 provinces. For military purposes, these 72 provinces, which constitute the whole kingdom, are considered to be the military area, and this area is divided into 22 military provinces. The military provinces are grouped together into seven military circles. Most military provinces include two or more political provinces (*i.e.*, civilian provinces) within their boundaries. Several military provinces, as prescribed by military authority, constitute one military circle. In each military province there is one provincial military court, and in each military circle, one circle military court.

2. *Jurisdiction as to persons.*¹²

Eight classes of persons are subject to the jurisdiction of military courts. They are:

- (1) commissioned officers on active duty;

¹¹ These are specific offenses relating to the security of the Kingdom: Sections 107 to 112 of the Penal Code are offenses against the King, the Queen, the Heir-Apparent and the Regent; Sections 113 and 118 are offenses against the internal security of the Kingdom; and Sections 119-129 are offenses against the external security of the Kingdom.

¹² Section 16, A.O.M.C.

(2) commissioned officers not on active duty, but only when they violate any order or regulation under the Military Criminal Law;

(3) non-commissioned officers and servicemen on active duty or in regular forces, or persons serving under military service laws;

(4) military cadets as designated by the Ministry of Defense;

(5) conscripts placed in active service and received by the military authorities for the purpose of transferring them to active duty in a military unit;

(6) civilians in military service, when they commit offenses in the performance of official military duty, or certain offenses on military premises or at the location of any military unit, resting place, camp, vessel, aircraft or vehicle under the control of military authorities;

(7) persons lawfully detained by or kept in the custody of military authorities; and

(8) prisoners of war or enemy aliens in the custody of military authorities.

Under military law, a person will not be tried by a military court unless he comes under the court's jurisdiction as to territory and person.

3. *Jurisdiction as to offenses.*¹³

In general, any offense committed against military law or other criminal law, where the offender is under the jurisdiction of military law at the time of the offense, is triable by a military court. However, some offenses are specifically exempted by military law from trial by a military court. Those offenses are:

(1) a joint offense by person(s) under the jurisdiction of a military court and person(s) not under the jurisdiction of a military court;

¹³*Id.*, section 14.

(2) an offense connected with another case within the jurisdiction of a civilian court;

(3) an offense which must be tried in the juvenile court; and

(4) an offense held by a military court to be outside its jurisdiction.

111. THE STRUCTURE AND JURISDICTION OF THE THAI MILITARY COURTS

Thailand has three levels of military courts, that is, the military courts of first instance, the Military Appeal Court, and the Military Supreme Court.

A. THE ~~MZLZTARY~~ COURTS OF FIRST INSTANCE

The military courts of first instance are of four types. All cases are initiated in one of these four courts.

1. Provincial military courts.

One provincial military court is in each military province, except in a military province that contains a military circle headquarters. In the latter instance, only a circle military court is in that military province. At present, there are fourteen provincial military courts.¹⁴ Normally a provincial military court is located where a military provincial headquarters is located. Three judges, two of them non-lawyer commissioned officers, and one judge of the Judge Advocate General's staff, form a quorum of a provincial military court. These three members of a military court are collectively called "military judges," and act in the same manner as civilian

¹⁴Each of the provincial military courts is named after the official name of the province in which it is located. The fourteen provincial courts are: Petchaburi Provincial Military Court, Rajburi Provincial Military Court, Saraburi Provincial Military Court, Lopburi Provincial Military Court, Choburi Provincial Military Court, Khon-Gan Provincial Military Court, Surin Provincial Military Court, U-Dorn Provincial Military Court, Pitsanuloke Provincial Military Court, Uttaradit Provincial Military Court, Chumphon Provincial Military Court, Song-Kla Provincial Military Court, Chiang Rai Provincial Military Court, and Chiang Yai Provincial Military Court.

judges. However, a distinction is to be drawn between military judges who are not judge advocates and military judges who are.

A military judge who is not a judge advocate is a commissioned officer not necessarily holding a law degree. He participates fully in the court's quorum and has a right to vote in making the court's decision.¹⁵ Selection for appointment as non-lawyer judges to form a quorum of a military court is on a rotation basis among all officers in the command.

A military judge who is a judge advocate must be a commissioned officer over 25 years of age; hold a law degree or its equivalent; be a member of the Thai Bar Association; and have such other qualifications as are required by the Defense Regulation on the Judge Advocate General's Staff (B.E. 2499).¹⁶ As a practical matter, it is the lawyer judge who conducts the case and instructs the non-lawyer judges on points of law and procedure. He is also the author of the court's decision.

Appointments to and removals from judgeships in military courts at all levels are under the authority of His Majesty and King. However, only in the Military Appeal Court and the Military Supreme Court do appointments to and removals from judgeships have to be made by royal permission. For other courts, the King may delegate his authority to the commanders or to the Minister of Defense. For a provincial military court, the King delegates his power to the commander of the military province. Generally, any commissioned officer on active duty, regularly stationed within the territory of a military province, may be appointed as a non-lawyer military judge.

A lawyer judge, who may also be called a judge of the Judge Advocate General's Staff, may be appointed as judge of any military

¹⁵ By way of comparison with the Anglo-American common law jury system, a non-lawyer judge performs his task as does a member of a jury. This system is also somewhat similar to that used in some of the European civil law systems, in which lay judges, called assessors, assist a professional judge in performing his duties.

¹⁶ He must have been a judge trainee for at least 6 months, certified as qualified by the Judge Advocate General and appointed as a judge by the commander or the Ministry of Defense, as the case may be.

court provided he has the appropriate rank required by military law. For a provincial military court and also any other military court of first instance he must be a second lieutenant or higher. The president of the military court is the judge who has the highest seniority regardless of his status as a lawyer or non-lawyer judge.

As mentioned earlier, the provincial military court has jurisdiction over the territory of the military province, which may include several civilian provinces. For example, the Rajburi military province covers the civilian provinces of Rajburi, Kanjanaburi and Samutsongkram. Any offense committed in any of these provinces will fall under the territorial jurisdiction of the Rajburi provincial military court.

The provincial military court is competent to try criminal cases under all provisions of law, except cases in which the accused are commissioned officers. Such cases have to be brought before the competent circle military court or the Bangkok Military Court, as the case may be.

The provincial military court is competent to render a judgment in a case in which the law does not provide a minimum penalty, or in a case in which the law provides a minimum penalty not exceeding one year of imprisonment or a fine not exceeding two thousand baht, or both.^{16A} However, in either of these cases the provincial military court may render a judgment only when it decides to dismiss the case or to inflict punishment on the accused not exceeding one year's imprisonment for each count or offense or to impose a fine not exceeding two thousand baht, or both.

If the provincial military court considers that the accused should suffer more punishment, then it has no judgment power. In that situation, the court will forward the case together with its punishment recommendation to the circle military court or the Bangkok Military Court, as the case may be, to announce the judgment.

^{16A} The *baht* is the basic monetary unit of Thailand, corresponding to the United States dollar or the French franc.

2. *Circle military courts.*

At present, Thailand has seven military circles. With one exception, in each military circle there is one circle military court which is located in the province where the military circle headquarters is established. The exception is the 1st military circle, having as its military area Bangkok, in which the Bangkok Military Court is located.

Three military judges form the quorum of a circle military court. They are two non-lawyer commissioned officers and one judge of the Judge Advocate General's Staff. A non-lawyer judge must have the same or higher rank than that of the accused at the time the charge is instituted. This is required as the circle military court has the power to try every officer below the rank of general.

Appointment of the military judges of a circle military court is made in the same manner as it is in the provincial military court; that is, the King delegates his power to the military commander of a military circle. Only the commander can exercise this delegated power; he may not redelegate the authority to any other officer. However, in the commander's absence, an officer acting on his behalf may exercise this authority. In case of necessity, the circle military commander may appoint a reserve officer as a military judge.

The circle military court has the power to try any military member, except a general officer, for any offense. No limitation on maximum punishment exists in that court. The circle military court is also competent to authorize recommended judgments for cases forwarded by any provincial military court.

3. *The Bangkok Military Court.*

The Bangkok Military Court tries more cases than any other court of first instance. It is located within the offices of the Judge Advocate General's Department, which is situated in the compound of the Ministry of Defense in Bangkok. The composition of the quorum for this court is the same as for provincial and circle military courts. His Majesty the King delegates his authority to the Defense Minister to appoint judges of the Bangkok Military Court.¹⁷ The same rules of appointment of military judges in all military courts of first instance also apply here.

¹⁷A.O.M.C. § 10.

The Bangkok Military Court is the only court of first instance that has unlimited territorial jurisdiction.¹⁸ However, if an offense is committed that is triable by any other military court, then that court will usually try the case.

Of interest is the implicit extraterritorial jurisdiction of the Bangkok Military Court, as the only court of first instance having unlimited territorial jurisdiction. The A.O.M.C. does not explicitly grant the Bangkok Military Court jurisdiction over any criminal offense committed outside the Kingdom of Thailand by a person under the jurisdiction of the Thai military courts. However, after considering and examining all relevant criminal laws, the author concludes that the Bangkok Military Court does have this jurisdiction. Section 5 of the Thai Military Penal Code states:

Whoever, according to the law on the organization of military courts, being under the jurisdiction of a military court, commits an offense or offenses outside the Kingdom of Thailand, against this code or against any law of the foreign country where the offense is committed, shall be punished in the Kingdom of Thailand.

Although the cited provision does not state which military court should prosecute the case, clearly the appropriate court is the Bangkok Military Court, as other military courts of first instance would have no territorial jurisdiction over the case.

The Bangkok Military Court is competent to try and adjudge all criminal cases without limitation on maximum punishment and with no restriction as to the rank of the accused. That court also is competent to authorize judgments for recommended cases forwarded by provincial military courts.¹⁹ All cases in which the accused are generals or the equivalent must be instituted in the Bangkok Military Court.

¹⁸*Id.*, § 17(3). Although the language of this section clearly states that the Bangkok Military Court's territorial jurisdiction extends throughout the kingdom, other relevant sections providing for efficient, prompt resolution of cases limit that jurisdiction in practice. Normally, if a case is within the jurisdiction of a provincial or circle military court, that court should try the case.

¹⁹See discussion in text, *supra*, concerning the provincial military court.

4. *Unit military court.*

A unit military court may be constituted when any military unit, of not less than battalion strength, is on duty outside the kingdom or while travelling on duty outside **the kingdom**.²⁰ A military court of this type has never been established in practice. The drafters of the A.O.M.C. have anticipated possible future need for this type of court.

A unit military court would be located with a military unit of requisite strength. The composition of the quorum for this court would be the same as for the previously described types of military courts of first instance. The rules for appointment of judges to other courts of first instance apply for appointments to a unit military court.

Other than the requirement that the unit be on duty outside Thai territory, no territorial restriction limits the jurisdiction of the unit military court. Jurisdiction depends solely on the relationship between the accused and the military unit, not upon where the offense is committed. The unit military court is competent to try and adjudicate all criminal offenses except cases in which the accused has the rank of general or its equivalent. The court's competence is the same as that of the circle military courts.²¹

B. THE MILITARY APPEAL COURT

The Military Appeal Court is a military court of intermediate appellate jurisdiction. It is established at the same location in Bangkok as the Judge Advocate General's Department in the Ministry of Defense. Five military judges form a quorum for trial and adjudication; they are one or two general officers, one or two officers of the rank of major, lieutenant commander, squadron leader or higher, and two judges of the Judge Advocate General's Staff who also have the rank of major or higher.

His Majesty the King has the exclusive power to appoint judges to or remove them from this court, based upon recommendations of the Minister of Defense. To insure availability of a quorum, the

²⁰ A.O.M.C. § 9.

²¹ See discussion on competence of circle military courts in text, *supra*.

Minister of Defense determines and recommends an adequate number of military judges for appointment.

The Military Appeal Court is competent to try and adjudicate all appeals against judgments or orders of the military courts of first instance. Military law does not provide grounds that may be raised on appeal. In this respect, the civilian Criminal Procedure Code applies. In general, an appeal may be made on questions of fact and questions of law against any judgment or order of a court of first instance except where such appeal is prohibited by law.²²

C. THE MILITARY SUPREME COURT

The Military Supreme Court is the military court of highest level. It is also established in Bangkok at the same location as the Military Appeal Court. Five military judges form a quorum for trial and adjudication in the Military Supreme Court. They are two general or flag officers, and three judges of the Judge Advocate General's Staff of the rank of special colonel²³ or higher.

His Majesty the King has the exclusive power to appoint judges to or remove them from the Military Supreme Court. The Minister of Defense makes appropriate recommendations to the King.

Prior to 1974, the Military Supreme Court was not authorized to review appeals against judgments or orders of the Military Appeal Court. Those appeals had to be lodged in the Civilian Supreme Court. The Military Supreme Court before 1974 was competent only to review appeals lodged against disciplinary cases, or cases which required non-public trial due to national security. Its judgments in such cases were final. Since 1974, the Military Supreme Court has been competent to try and adjudicate all appeals against judgments or orders of the Military Appeal Court. Again, its judgments or orders are final.

²²The right to appeal on questions of fact, as well as of law, under Thai criminal procedure, is illustrative of the practice that exists generally in countries following the civil law system.

²³The Ministry of Defense Council held at its 1/16 meeting on February 12, 1973, that the title "special colonel" is not a formal military rank, but merely an indication of a pay grade. The title of brigadier general is not awarded any longer. It is gradually being phased out by attrition.

D. COURT-MARTIAL

A court-martial comes into existence only (1) in wartime, in time of fighting, or upon proclamation of martial law, and (2) when a military unit or vessel is in the theater of operation. In this connection, military courts may be divided for consideration according to the situation of the country, into military courts in normal times, and military courts in abnormal times. In abnormal times, that is to say, in time of fighting or wartime, or when martial law is enforced, circumstances may require that military trial and adjudication be speedier and more summary for the purpose of faster restoration of a peaceful situation.

A court-martial is not a permanently established court as are other military courts. Its location conforms with the movements of a military unit or vessel in the operational theater. It may be constituted outside of the country. Examples are the court-martial of the 21st Combined Regiment in Korea, and the court-martial of the Thai Forces in Vietnam.

Three judges, all commissioned officers, form a quorum for trial and adjudication.²⁴ Unlike other Thai military courts of first instance, the law does not require a judge advocate officer to be a member of a court-martial. However, in practice, when Thailand sent her forces to Korea and Vietnam, judge advocate officers were appointed as members of courts-martial.

The King delegates his power of appointment and removal of judges to the commanding officer. Therefore, the highest commanding officer (who must be at least a battalion commander or equivalent) at the location, or the person acting in his stead, is empowered to appoint judges for a court-martial.

If members of the Army, Navy and Air Force engage in joint operations, the highest commander at the location has the power to appoint judges of a court-martial to try offenders from all military services.

A court-martial has territorial jurisdiction in conformity with the geographical jurisdiction allocated to the military unit in which it is

²⁴A.O.M.C. § 41.

constituted. Jurisdiction of the military unit in the theater of operations is determined and announced by the commander of such military unit, based on the unit's operational needs.

A court-martial is competent to try and adjudicate all criminal cases, where the offenses were committed within its territorial jurisdiction, under every provision of law and without limitation as to persons.²⁵ This does not mean that all criminal offenses within the jurisdiction of a court-martial must be tried by that court. A case could be within the jurisdiction of more than one military court. The purpose of the law in authorizing the court-martial is to leave to the person empowered to appoint judges the determination of whether convening a court-martial to try a case is necessary. One should note also that the court's competence over persons is subject to international agreements when the court is established outside the country.

IV. EFFECTS OF RELEVANT MODIFICATION AND REVISIONS, INCLUDING A PROCLAMATION OF MARTIAL LAW

A. RECENT MODIFICATIONS AND REVISIONS

Previous discussion pointed out that Thai military courts may be considered according to the situation, that is, military courts in normal periods and military courts in abnormal periods. Abnormal periods are wartime, times of fighting (including civil disorder), and proclamation of martial law. A military court in normal periods has been construed to be the same court as in abnormal periods.²⁶ However, in the past, some interesting differences existed when the military courts acted at different times and with different status.

²⁵*Id.*, at section 42. That section states that **anyone** is triable by a court-martial if the person commits an offense within its territorial jurisdiction.

²⁶In its decision in the case of Bangkok Military Prosecutor v. Sergeant Major Somchit Kulasawasdi, No. 10 (Mil. Sup. Ct. 2499), the Military Supreme Court held that the Bangkok Military Court in normal periods and the Bangkok Military Court in abnormal periods are the same court, but that the finality of its judgments may be different due to the different times and places of the offenses.

Before the Act on the Organization of Military Courts (B.E. 2511) came into effect:

(1) In a military court in normal periods, either a military prosecutor or an injured person who was a person under the jurisdiction of the military court was entitled to institute a criminal prosecution. However, in a military court in abnormal periods, only a military prosecutor was entitled to prosecute.

(2) A military court in abnormal periods of martial law had greater jurisdiction to try additional types of cases. This expanded jurisdiction was specified, in accordance with the law on martial law, in an announcement or an order of the person authorized to proclaim martial law.

(3) In abnormal periods of martial law, the person authorized to appoint military judges was empowered to appoint civilian judges as military judges, and to appoint public prosecutors and the civilian court's registrars or other appropriate and qualified persons as military prosecutors or military court's registrars, to help relieve the burden of military courts.

(4) Appointment of counsel for the accused in a military court in abnormal periods was prohibited.

(5) Appeal against an order or a judgment of a military court in abnormal periods was prohibited.

The Act on the Organization of Military Courts (B.E. 2511) changed some of the above aspects. The Act allowed the accused to obtain counsel in a military court in abnormal periods except in the following cases: (1) cases in which some offenses under some specified provisions of the Military Penal Code were charged, whether or not other offenses were also charged; (2) cases in which offenses against national security under Sections 107 to 129 of the Penal Code²⁷ were charged, whether or not other offenses were also charged, or (3) cases in which offenses against the Anti-Communist Activities Act were charged, whether or not other offenses were also charged. Also, this Act gave opportunity to both the prosecution and the accused to appeal against a judgment or order of the

²⁷See note 11, *supra*.

military court in abnormal periods except in cases where right to counsel was **denied**.²⁸

The Revolutionary Party's Announcement No. 25,²⁹ in effect since 9 November 1977, modified the Act in some respects. Under Announcement No. 25, right to counsel is enjoyed by the accused in all cases before a military court in normal periods and in abnormal periods. However, appeal against a judgment or order of a military court in abnormal periods is now **prohibited**.³⁰

With the exception of the points stated above, no other significant differences exist in procedure followed by a military court in normal periods and a military court in abnormal periods.

B. EFFECTS OF A PROCLAMATION OF MARTIAL LAW

1. Effective Military Courts.

In Thailand, the relationship between martial law and military courts is very confusing to laymen. Indeed, even among lawyers who have not inquired into the matter, there are still some misconceptions. In Thailand, most people understand that courts-martial can come into existence and play an important role when martial law is in effect. This may be because, in the past twenty years, Thailand has experienced a number of revolutions, and in each revolution, martial law was proclaimed. Quite a few civilians who committed serious offenses were tried by military courts during periods of martial law. However, a *court-martial* has never been constituted within the Kingdom. Readers should understand why a

²⁸Unlike common law legal systems, under Thai law (as is the case with most countries that follow the civil law legal system), a prosecutor may initiate an appeal against a decision or sentence in a criminal case. If the appellate court accepts the prosecutor's appeal, the accused may be retried by that court and is subject to the punishment imposed by that court.

²⁹Revolutionary Party's Announcement Number 25, Secs. 1 and 2, dated November 8, B.E. 2520. This announcement has been effective from the day after the date of its publication in the Government's *Gazette* (November 9, B.E. 2520).

³⁰A.O.M.C. § 61, as amended by Revolutionary Party's Announcement No. 25 § 2 (Nov. 8, B.E. 2520).

court-martial has never been established in the kingdom, after reading the previous section discussing the competence of courts-martial. A court-martial may be constituted only when *two* elements are present, that is:

(1) It must be wartime, time of fighting, or upon a proclamation of martial law; *and*

(2) a military unit or vessel must be located in the area of battle.

Considering these requirements, one sees why a proclamation of martial law does not necessarily nor automatically give rise to a court-martial.

Section 36 of the A.O.M.C. states:

In abnormal periods, that is, in periods of fighting, or war or during a proclamation of martial law, all military courts still have their normal jurisdiction to try and adjudicate cases according to their competence. But if the person authorized to proclaim martial law has made an announcement, or the supreme commander has issued an order under the law on martial law, authorizing military courts to have jurisdiction to try and adjudicate some other criminal cases, then the military courts shall also have jurisdiction to try and adjudicate those additional cases under such announcement or order.

In such a case, civilians who normally are not under the jurisdiction of military courts may be triable by a military court, if they commit any of those offenses. Section 36 of the A.O.M.C. should be read together with Section 7 of the Act on Martial Law (B.E. 2457), which reads:

In any locality where martial law has been proclaimed, civilian courts shall have normal jurisdiction and competence over the case. But the person authorized to proclaim a martial law has power to make an announcement authorizing military courts to have jurisdiction to try and adjudicate criminal cases in which the offenses are

committed in such locality, during the proclamation of martial law as specified in the Annex of this Act.

Such an announcement authorizing military courts to have jurisdiction to try and adjudicate cases in the first paragraph shall become effective for cases in which the offenses have been committed as from the time and date specified in the announcement. The date and time specified will be either the date and time the announcement is made or afterwards. Such an announcement is to be published in the Government's Gazette.

Also, in the event any offense is committed in a locality where martial law has been **proclaimed**,³¹ and such offense has some special relation to national security or public peace and order, the Supreme Commander may order such cases to be tried and adjudged in a military court.³² An announcement by the person authorized to proclaim martial law, or an order by the Supreme Commander, is made or issued by virtue of the law on martial law. However, a number of Revolutionary Party announcements, especially in **1958** and **1971**, authorized military courts to try some special cases. Those announcements had legal effect as if they were laws themselves.

2. Effect on civilian courts.

Civilian persons, not members of the armed forces, may be tried by military courts in abnormal periods, as already discussed. If so, the number of cases in military courts might well increase to a degree exceeding the normal court personnel's capacity to adjudicate. For this **purpose**,³³ persons authorized to appoint military judges may appoint civilian judges to be military judges and may appoint public prosecutors, registrars of civilian courts, or appropriate qualified persons to be military prosecutors and military court registrars. Thus, civilian courts could become military courts as well.

³¹ As amended by the Act on the Organization of Military Courts (B.E. 2503).

³² The Act on Martial Law (B.E. 2457) authorizes the prime minister or the supreme commander to declare martial law.

³³ A.O.M.C. § 37.

V. CRIMINAL PROCEDURE IN MILITARY COURTS

Thai military criminal procedure³⁴ is essentially similar to civilian criminal procedure, though governed by laws, rules and regulations issued under military law. The A.O.M.C. established very few differences from civilian criminal procedure. Further, if no military laws, rules or regulations apply to a particular procedural issue, the civilian Criminal Procedure Code applies *mutatis mutandis*. If the Criminal Procedure Code does not cover the issue, the Civil Procedure Code will apply as far as possible.

Trial procedure in military courts is a subject unto itself. The discussion here considers only those matters within the scope of this study.

A. FACT-FINDING FOR THE PURPOSE OF CONVICTION

In the trial of a military court, the facts as found in the trial may differ only in small detail from the facts as stated in the charge. Such differences in detail may include the time or place of the commission of the offense, or the specific nature of the offense in a related class of offenses (*e.g.*, theft, extortion, cheating and fraud, misappropriation, or receiving stolen property), or the commission of offenses by intention versus by negligence. Such differences will not cause the court to consider the essential elements of the charge to be unproved and the court will not dismiss the case unless it appears that a discrepancy in the charge has actually misled the accused in his defense.

In the past, Thai jurists had contending opinions on the question of whether a military court should punish an accused on the basis of the facts found in the trial when those facts varied somewhat from those charged. Did the general principle that every court is to produce justice for the entire society call for punishment or acquittal in that situation? One opinion was that to punish the accused for facts different from those stated in the charge would be unfair and against justice. The other opinion reasoned that if the facts found by the court in its trial differed only *in minor details* from the facts

³⁴*Id.*, § 45.

stated in the charge, it would be fair and right to punish the accused who really committed the offenses. To release offenders who clearly broke the law would be an injustice to society or even endanger the public peace. The military criminal procedure law has followed the latter opinion.³⁵

B. RIGHT TO COUNSEL

At present, the accused has the right to counsel in a military court in either normal or abnormal periods,³⁶ except in a court-martial or a court acting for a court-martial.³⁷ In a military court in normal periods, an injured person who is subject to the jurisdiction, and is within the competency, of such military court, may also be entitled to counsel, as he is authorized by law to assert his complaint as a prosecutor.

The accused is entitled to select military counsel, and the court must furnish the counsel if he is reasonably available. Further, in a case of any offense punishable with maximum imprisonment of more than 10 years,³⁸ the court, before commencing the trial, must ask the accused whether he has a counsel or not. If the accused has none and requires counsel, the court must appoint one military counsel for him. Military counsel must also be a qualified lawyer as designated by the Ministry of Defense, that is, he must be an active duty member of the Ministry of Defense, hold a law degree and have been granted permission to represent the accused. The accused's commander holding at least the position of a battalion commander or its equivalent, may grant the permission to serve as defense counsel.

In the special type of military court previously discussed, the court-martial, right to counsel is absolutely prohibited. This prohibition also applies to a court conducting cases in place of a court-martial under Sections 40 and 43 of the A.O.M.C.

³⁵*Id.*, § 60.

³⁶*Id.*, § 55, second para.

³⁷*Id.*, § 55, fourth para.

³⁸*Id.*, § 56.

The accused also is free to choose any civilian counsel to represent him in his defense, but he may obtain civilian counsel only at his own expense. A civilian counsel must be legally qualified, that is, he must be a lawyer and a member of the Thai Bar Association.

C. APPEAL

In general, appeal may be lodged against a judgment of a military court in normal periods. Four categories of persons are entitled to appeal to a higher military court: prosecutors, the accused, persons authorized to appoint military judges,³⁹ and persons authorized to give punishment orders.⁴⁰ In contrast, only the prosecutors and the accused may appeal in civilian courts.

Prompt appeal is important or the time allowed for appeal will expire. The periods allowed for appeal are as follows: for the prosecutors or the accused, within **15** days to a higher court, counting from the date the judgment was read; or for the persons authorized to appoint military judges or the person authorized to give punishment orders, within **30** days, counting from the date judgment was read. Appeal is prohibited against judgments or orders of military courts in abnormal periods,⁴¹ and of a court-martial or a court acting as a court-martial.

VI. SENTENCE ENFORCEMENT

In Thai civilian criminal procedure, the court issues a warrant ordering the authority concerned to execute the sentence. For example, if the court sentences the accused to death or imprisonment, it will send a warrant to the prison authority ordering the enforcement of its sentence to execution or imprisonment.

In this regard, the military has a different procedure. Due to the importance of the command line (chain of command), the military court will not issue a warrant to the military prison authority for

³⁹ As discussed in section IV. *See also* note 31.

⁴⁰ This category is discussed in section VI.

⁴¹ *See* discussion, *supra*, in section IV, for comparison with the rule when the Act on the Organization of Military Courts (B.E. 2611) was in effect.

the execution of the sentence. Instead, the court will issue a warrant notifying the accused's military commander of the sentence. Upon receipt of the warrant, the commander will attach to the warrant his order to the authority responsible for execution of the sentence.

As a consequence, the military commander, and not the military court, is the direct issuer of the order to have the accused subjected to punishment according to the court's judgment. For this reason, such commanders are "the persons authorized to give punishment orders." They include first, commanders in the chain of command over the accused who are authorized to give punishment orders in accordance with judgments of the provincial military courts, the circle courts, or the Bangkok Military Court. They are also the commanding officer whose position is division commander or above, or the commanding officer whose position is battalion commander or above if the accused is stationed in a locality different from that of the commanding officer whose position is division commander or above. In cases where the accused is in a locality different from that of the commanding officer whose position is battalion commander or above, or where the accused is not a Thai military member (*e.g.*, a prisoner of war or enemy alien who commits an offense while in the custody of the military authority), persons authorized to appoint judges of military courts of first instance⁴² are authorized to give punishment orders.

A sentence of a Thai military court, except that of a unit military court and a court-martial or a court acting as a court-martial, will be enforced by the person authorized to give punishment orders only when the judgment becomes final. If an appeal has been made, judgment is final only at the end of the appellate process. Further, in any case appealable under law, a military court of first instance has the duty to forward any judgment inflicting the death penalty or imprisonment for life to the Military Appeal Court, even if there has been no appeal within the appeal period. Such judgments are not final until confirmed by the Military Appeal Court. However, a sentence of a court-martial or a court acting for a court-martial un-

⁴² An exception is that persons authorized to appoint judges to unit military courts are not authorized to give punishment orders.

der Section 40⁴³ of the A.O.M.C. may be enforced immediately by the person authorized to give punishment orders.⁴⁴ Where judges of a civilian court have been appointed as military judges to act as a military court in abnormal periods,⁴⁵ the sentences of that court will be enforced under Section 245, first paragraph, of the civilian Criminal Procedures Code. Pursuant to Section 245, subject to the provisions of Sections 246, 247 and 248, a judgment shall be enforced without delay after the case has become final.

The Court of First Instance has the duty to send to the Appeal Court any file of the judgment inflicting punishment of death or imprisonment for life, where no appeal has been lodged against such judgment. Such judgment shall not become final unless it has been confirmed by the Appeal Court.

Under Section 246, execution of imprisonment may be suspended until the cause of suspension has ceased in the following cases: when the accused is insane, when it is feared that the life of the accused will be endangered by imprisonment, if the accused is pregnant for seven months or over, and if the accused has given birth to a child and a period of one month has not yet elapsed.⁴⁶

Section 247 provides that where the accused has been sentenced to death, the sentence shall not be executed until compliance with Criminal Procedure Code provisions governing pardon.⁴⁷

⁴³“The person authorized to appoint judges of a court-martial shall have the power to send the accused to any military court elsewhere for trial and adjudication, and such court shall have the same powers and duties as a court-martial.” A.O.M.C. § 40.

⁴⁴An exception to this is where the person sentenced to death is a pregnant woman. Execution of the sentence in that case must be suspended until after her delivery.

⁴⁵This situation may arise when persons authorized by Section 30, A.O.M.C., to appoint judges are also authorized by Section 37, A.O.M.C., to appoint judges of civilian courts to be military judges, and do so.

⁴⁶During such suspension, the court must order an administrative or police official to keep the accused in custody in a suitable place.

⁴⁷If a woman sentenced to death is pregnant, the rule under the civilian Criminal Procedure Code is the same as under military law, and execution of the sentence shall be suspended until after her delivery.

Under Section 248, if a person sentenced to death becomes insane before being executed, the execution shall be suspended until that person has **recovered**.⁴⁸ If the insane person recovers after one year from the date when the judgment became final, the punishment of death shall be commuted to imprisonment for life.

VII. ANALYSIS

A. COMPARISON OF CIVILIAN AND MILITARY COURTS

The previous sections demonstrate that the jurisdiction of the Thai military courts depends upon the situation existing in the country. The military courts in normal periods function in a manner similar to the civilian courts. However, in abnormal periods, both the subject matter and personnel jurisdiction of the military courts are expanded in response to the necessity to control increased criminal activities having direct impact upon national security. Some brief comparisons of the Thai military courts and civilian courts are as follows:

1. *Similarities.*

a. The military courts are established by virtue of the Act on the Organization of the Military Courts (B.E. 2498), and the civilian courts are established by the Law for the Organization of Courts of Justice. Thus, both courts are established by legislative authority.

b. The proceedings of both types of courts are conducted on behalf of His Majesty the King.

c. The divisions of the courts are the same. The military courts are divided into three levels, *i.e.*, the military courts of first instance, the Military Appeal Court, and the Military Supreme Court, while the civilian courts are also divided into three levels, *i.e.*, the courts of first instance, the Appellate Court and the Supreme Court.

⁴⁸During suspension of the sentence due to insanity, the court may apply Section 46, para. 2, of the civilian Penal Code, dealing with control of the person.

d. Although specific military criminal procedure exists, governed by the laws, rules and regulations issued under military law, the Criminal Procedure Code will apply *mutatis mutandis*, when military laws, rules and regulations do not cover the issue. If there is any point of procedure not provided for in the Criminal Procedure Code, the Civil Procedure Code will apply. These two codes are applicable in civilian courts.

e. Appointments to and removals from judgeship of the Military Appeal Court judges and the Military Supreme Court judges are made by royal permission, as is also the case for every civilian judge.

2. Differences

a. In a military court of first instance, the King may delegate his power to the Minister of Defense or the military commander to appoint and remove military judges. This is contrary to the practice in a civilian court. The civilian court of first instance is a constitutionally established body composed of permanent judges. As a consequence, the King appoints a certain number of judges for each civilian court, who are available as a complete quorum to hear any case coming under the court's jurisdiction. In a military court of first instance, a number of officers are appointed to act as judges on a case-by-case basis. The jurisdiction of a military court, unlike that of a civilian court, is not restricted to sitting in one location, so long as the hearing takes place within the boundary of its territorial jurisdiction.

b. A quorum of a military court is composed of lawyer and non-lawyer judges, all of whom must be members of the armed forces, while a quorum of a civilian court must be composed of judges who are all qualified lawyers. This difference is understandable because one of the principal purposes of the Thai military court system is to serve discipline in the armed forces by integrating military commanders into the military justice system.

B. ARE THAI MILITARY COURTS PART OF THE JUDICIARY?

Every military court at any level is organized under the laws of the Kingdom of Thailand, although a military court is generally a

court of special and limited jurisdiction when compared to a civilian court. The whole proceeding from its inception is judicial. The trial, findings, and sentence, are the legal acts of a court organized and conducted under the authority of and according to the prescribed forms of law. The following language in the Thai Constitution supports the author's conclusion:

The trial, findings, and sentence are within the exclusive power of a court to act in conformity with law and on behalf of His Majesty the King.

C. ARE THAI MILITARY JUDGES INDEPENDENT FROM ANY OTHER INFLUENCE?

Section 5, paragraph 2 of the Act on the Organization of Military Courts (B.E. 2498) provides:

The Minister of Defense shall be responsible for the orderly administration and operation of the Military Courts, but trials, including orders or judgments, shall remain exclusively within the discretion of the Military Courts.⁴⁹

The language of that provision makes clear that, as a matter of law, military judges are free to perform their judicial functions. This is also true in practice. Military judges are always highly respected and trusted by all parties concerned. As a matter of record, no military commander at any level has ever attempted to abuse his power with military judges, and, to date, there has never been a case of corruption on the part of military judges. The author believes that this unblemished record will continue.

VIII. CONCLUSION

The Thai military court system is basically disciplinary in character. However, a military court does not neglect to uphold justice in reaching its decision. The administration of Thai military justice is separate and independent from the civilian justice authority. In

⁴⁹Thailand's Constitution (B.E. 2511), Art. 157, also provides, "The court has the exclusive power to try and adjudge a case in conformity with law and on behalf of His Majesty the King."

summary, there are four types of military trial courts and two military courts of review, one of which is the highest military court.

The reader will have noted that Thailand has two different supreme courts or courts of last resort, the Military Supreme Court and the civilian Supreme Court or **DIKA** Court. This may seem strange to American lawyers accustomed to the fact that, with all the complexities engendered by a federal structure of government, the capstone of the American judicial system is the United States Supreme Court.

The author believes that there should be only one supreme court in Thailand, in which the powers of final judicial review are vested. Almost every national constitution lays down in one form or another the principle that all men should be equally protected under the law. In Thailand, this fundamental principle would be implemented more effectively if the possibility of differing interpretations of the same law by two judicial institutions of equal authority could be eliminated.

THE EXCLUSIONARY RULE: COMPARISON OF ISRAELI AND UNITED STATES APPROACHES*

by Lieutenant Colonel Amnon Straschnow,
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In this article, the author offers a view from abroad of one of the most controversial principles of American criminal law, the rule which requires exclusion from evidence of items, documents, confessions, and so forth, which were obtained illegally by government agents. Lieutenant Colonel Straschnow finds the rule illogical and unnecessary, and recommends its abolition. He urges adoption of the Israeli practice, which, as in other common law legal systems, is to admit all relevant evidence but to accord it more or less weight according to circumstances.

Readers should find highly interesting the views of a scholar from a different legal tradition and society which does not accept as immutable all the points of criminal procedure which are taken more or less for granted by American lawyers.

I. INTRODUCTION

There are few subjects in modern American criminal law concerning which so many words have been written as the "exclusionary

*The opinions and conclusions expressed in this article are those of the author and do not necessarily represent the views of The Judge Advocate General's School, the Department of the Army, any other agency of the United States Government, or any governmental agency of the State of Israel.

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rule," which excludes from consideration by a trial court evidence obtained by unlawful methods. This article compares two different legal systems in their attitude to the exclusionary rule, the legal system in the United States of America and that which applies in the State of Israel. Although both systems originated from one common legal system, the British common law, they have reached different, almost contradictory, results in their treatment of the above-mentioned controversial rule of evidence. Special emphasis is placed in this article on the effect of such a rule in the military legal system. The author is strongly of the opinion that the exclusionary rule should be abolished, especially in the military justice system.

II. THE RULE AND ITS IMPLEMENTATION IN UNITED STATES COURTS

The exclusionary rule, as a binding rule in the criminal procedures in the United States, is a relatively new rule based primarily on case law and precedents of this century. It was only in 1914, when the United States Supreme Court, in the case of *Weeks v. United States*,¹ decided that evidence uncovered during an unlawful search must be denied admission at trial.

For a long time the rule did not apply in the State courts, and was limited to federal courts only. In 1961, the Supreme Court decided that the due process provision of the fourteenth amendment required application of the exclusionary rule also to state criminal proceedings. In *Mapp v. Ohio*,² an unusual case of unlawful search was presented. The Court said:

The ignoble shortcut to conviction left open to the State tends to destroy the entire system of constitutional restraints on which the liberties of the people rest. Having once recognized that the right to privacy embodied in the Fourth Amendment is enforceable against the States, and that the right to be secure against rude invasions of privacy by state officers is, therefore, constitutional in origin, we can no longer permit that right to remain an empty promise.³

¹232 U.S. 383 (1914).

²367 U.S. 643 (1961).

³*Id.*, at 660.

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Since that cornerstone opinion of the Supreme Court, the rule has become binding throughout the United States. This rule may be summarized as follows: All evidence obtained through an unlawful search or seizure, or as a result of use of unlawful methods of investigation leading to a confession, or through an illegal lineup, or otherwise in violation of due process, will be inadmissible and must be excluded from consideration at trial.

Many arguments have been made to justify this rule, which often prohibits the courts from basing their findings upon relevant and completely objective evidence, like weapons or heroin, which were obtained without full compliance with the exclusionary rule's requirements. Those arguments may be summarized as follows: Total exclusion of evidence is simply the most effective practical means of enforcing the requirements for lawful investigation of crimes. On the individual level, policemen and other interrogators will be deterred from using unlawful means if they know that the products of their unlawful actions will have no evidentiary value. On the institutional level, it is desirable as a matter of public policy that the Government, responsible for upholding the law, not be allowed to profit from its own illegal acts,⁴ and more specifically that the prosecution not be allowed to use "the fruits of the poisonous tree."

Prior to analysis of these purposes behind the exclusionary rule, it should be emphasized that the rule is not a basic right of the individual recognized by the Constitution, but a creation of the courts in case law. With this in mind, scholars can examine the rule with greater detachment than heretofore. It would be a mistake to consider this rule unchangeable.

In the 1949 case of *Wolf v. Colorado*,⁵ Mr. Justice Black said as follows:

I agree with what appears to be a plain implication of the Court's opinion that the federal exclusionary rule is not a

⁴*Bivens v. Six Unknown Federal Agents*, 403 U.S. 388, 414 (1971). For further discussion of the purposes of the exclusionary rule, see *Calandra v. United States*, 414 U.S. 338 (1974). See also text at notes 7 and 8, *infra*.

⁵338 U.S. 26 (1949).

command of the Fourth Amendment but is a judicially created rule of evidence which Congress may negate.⁶

In *United States v. Calandra*,⁷ decided in 1974, the Supreme Court concluded:

The rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved.⁸

Judge Malcolm R. Wilkey is also of the opinion that the exclusionary rule "is a judge made rule of evidence . . . it is not a rule required by the Constitution. No Supreme Court has ever held that it was."⁹

The exclusionary rule is not essential, vital, or indispensable under the Constitution, the major function of which is to guard the rights of the people. The rule is a tool fashioned by the courts to deal with ad-hoc problems which arise from police misbehavior and illegal government activity during an investigation. Such being the situation, the correct solution cannot be a continuation of current policy, in which relevant and substantial evidence is excluded from consideration by the courts in the United States.

Although nobody will doubt the importance of protecting basic rights of the individual, whether those rights are based on written constitutions or, as in other legal systems, are founded on elementary recognition of human worth, many people have had second thoughts as to whether the benefits of a safeguard such as the exclusionary rule are really worth the price.

Professor Charles A. Wright, in a 1972 article,¹⁰ observes that the exclusionary rule, in its current sweeping scope, can no longer

⁶*Id.* at 39.

⁷414 U. S. 338 (1974).

⁸*Id.*, at 348.

⁹Wilkey, *The Exclusionary Rule — Why Suppress Valid Evidence?*, 61 *Judicature* 214 (Nov. 1978).

¹⁰Wright, *Must the Criminal Go Free if the Constable Blunders?*, 50 *Texas L. Rev.* 736 (1972).

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be justified under the theory on which it was based. Professor Wright states:

It can fairly be said of the Exclusionary Rule that it can not be proved to have a significant deterrent effect and that this effect is not so inherently likely that we can assume it to exist in the absence of proof. Its benefit to society is dubious and uncertain. Its cost to society is great and real. Hundreds or thousands of criminals go free each year because the police are found to have violated, in one way or another, the intricate body of law on when and how they may search.¹¹

The author does not favor total abolition of the rule, and prefers the preservation "of an Exclusionary Rule, cut down in scope, and intended for . . . flagrant **cases**."¹² The author feels strongly that:

A rule that turns criminals of this kind free, can be justified only by clear and convincing evidence that its benefit to society outweighs this obvious cost. **As** we have seen, the evidence of benefits from the Exclusionary Rule falls far short of meeting that **test**.¹³

There is no concrete statistical information available which shows whether and to what extent the exclusionary rule actually deters policemen and other law enforcement officials from violating the rights of suspects. However, the extent to which courts continue to invoke the rule in case after case tends to suggest that those who are supposed to be deterred have not yet "gotten the message."

Professor Dallin H. **Oaks**, after a deep and thorough examination of this question, seems to be far from satisfied with the rule's results, or with the application of the rule in general. He concludes that there is no "(empirical) substantiation or refutation of the deterrent effect of the Exclusionary Rule."¹⁴

¹¹*Id.*, at 741.

¹²*Id.*, at 744.

¹³*Id.*, at 742.

¹⁴**Oaks**, *Studying the Exclusionary Rule in Search and Seizure*, 37 U. Chi. L. Rev. 665, 709 (1970).

The author's own judgment is that the exclusionary rule is a failure as a deterrent. It should be abolished because it:

Imposes excessive costs on the criminal justice system. It provides no recompense for the innocent and it frees the guilty. It creates the occasion and incentive for large-scale lying by law enforcement officers. It directs the focus of the criminal prosecution from the guilt or innocence of the defendant to a trial of the police.¹⁵

In two recently published articles,¹⁶ Judge Wilkey expresses, vividly and clearly," his opposition to the exclusionary rule as it is currently implemented in the United States. He would like "to get rid of the exclusionary rule and its lameful influence."¹⁸ Judge Wilkey concludes that:

Under the present irrational exclusionary rule system, the guilty are over rewarded by a commutation of all penalties from crimes they did commit and the innocent are never compensated for the injuries they suffered.¹⁹

Chief Justice Warren E. Burger, in his article "Who Will Watch the Watchman?"²⁰ firmly rejects the contention that the rule is a deterrent, saying that this theory "was never more than wishful thinking on the part of the courts."²¹

¹⁵*Id.*, at 755.

¹⁶Note 9, *supra*; Wilkey, *A Call for Alternatives to the Exclusionary Rule: Let Congress and the Trial Court Speak*, 62 *Judicature* 351 (Feb. 1979).

¹⁷Professor Yale Kamisar of the University of Michigan Law School has observed, "In the 65 years since the Supreme Court adopted the exclusionary rule, few critics have attacked it with as much vigor and on as many fronts as did Judge Malcolm Wilkey." Kamisar, *The Exclusionary Rule*, 62 *Judicature* 336 (Feb. 1979).

¹⁸Note 16, *supra*, at 356.

¹⁹Note 9, *supra*, at 228.

²⁰14 *Am. U. L. Rev.* 1 (1964).

²¹*Id.*, at 12. Earlier in his article, Chief Justice Burger concludes, "No empirical evidence is available to support a claim that significant deterrence has been the result of the doctrine." *Id.*, at 10.

It is noteworthy that even in the American judiciary, dissatisfaction with the judge-made exclusionary rule is not rare. Many respected scholars and jurists, including the Chief Justice of the United States Supreme Court, call for relinquishment of the rule.

111. THE RULE IN THE MILITARY LEGAL SYSTEM

Criminal procedure in American military courts basically follows provisions of the Federal Rules of Evidence relating to the implementation of the exclusionary rule. Nevertheless, the military courts have developed their own body of case law to define the circumstances under which the rule will be applied in the military.

Special consideration is given in military law to evidence obtained as a result of illegal search and seizure. This is shown by the prerequisites that the courts have found to be necessary for a legal search. These prerequisites include authorization of the search by the commanding officer; establishment of probable cause; and exact specification of the place to be searched and the items to be seized. In the military there is a distinction between inspections, which are carried out usually for administrative purposes such as guarding the health or morale of the troops and the unit, and formal searches, aimed basically at finding incriminating evidence for the trial.

In the *Thomas* case, decided by the Court of Military Appeals in 1976,²² a commander ordered a barracks inspection to be conducted with a trained marijuana detection dog. Marijuana was found in the locker of the accused, but was ruled inadmissible. Though the three judges agreed in the result, they did so through the medium of three separate concurring opinions.²³ They were concerned about the manner in which a nominally routine inspection was used as a medium for criminal investigation. The facts in the case indicated a certain sloppiness in the procedures followed at the time of the inspection or search.²⁴

²² *United States v. Thomas*, 1 M.J. 397 (C.M.A. 1976).

²³ 1 M.J. at 398-402 (Judge Cook); 1 M.J. at 402-405 (Chief Judge Fletcher); 1 M.J. at 405-408 (Senior Judge Ferguson).

²⁴ 1 M.J. at 398-399.

In his concurring opinion, Chief Judge Fletcher stated:

Appreciating that the broadening of a commander's authority to inspect to carry out his *military* mission inevitably would lead under existing admissibility standards to use of such inspections solely to conduct law enforcement operations or as a ruse for others within the military justice system to avoid the probable cause requirement of the Fourth Amendment, I believe the exclusionary rule safeguard must be implemented to discourage such a course of action.²⁵

Chief Judge Fletcher did give consideration to the special circumstances of military life, and concluded:

That the paramount interests of our society demand that military commanders be given authority to conduct *reasonable* inspection to ferret out drug abuse even absent a showing of a probable cause and even if the individual already is suspected of possessing contraband.²⁶

Thus the Court acknowledges the commander's authority to make inspections for certain reasonable purposes and does not consider that such activity is forbidden or causes excessive intrusion upon the privacy of the individual. If such is the case and if the inspection was basically lawful, it is difficult to see the logic of Chief Judge Fletcher's controversial 1976 conclusion:

[W]hile I sanction the commander's constitutional right to conduct such inspection as part of his *command* function, the abuses inherent in any such inspection authority lead me to conclude that, to discourage future unlawful police activity, the fruits of all such inspections may not be used . . . as evidence in . . . criminal . . . proceedings²⁷

Such a division of the commander's authority into separate administrative and law-enforcement portions seems to this author unrealistic and impractical.

²⁵ 1 M.J. at 405 (Fletcher, C. J., concurring in the result).

²⁶ 1 M.J. at 404. Emphasis in original.

²⁷ 1 M.J. at 405.

The need to exclude the evidence in the *Thomas* case is difficult to understand. The Court of Military Appeals stated that it approved the commander's activity, and emphasized that he acted within the scope of his duty, for the benefit and welfare of the military organization for which he was responsible. Conceptual separation of a commander's actions into two parts, one part deemed acceptable in the interest of the health, welfare, and combat readiness of one's troops, and the other part deemed unacceptable for purposes of enforcing military law, seems highly artificial. The goal of discouraging future unlawful police activity is hardly likely to be furthered through such contradictory analysis.

In the military setting, there should be no question of rejection of the "fruits of the poisonous tree," because if an inspection is lawful as an inspection, its fruits are not poisonous at all. The individual should be deemed to have no right to complain of the ultimate aim of the search or inspection which intruded upon his or her privacy, or of the use to which seized items are put, i.e., as evidence, if the intrusion itself was basically lawful. Any tendency to expand the exclusionary rule to preclude admission of evidence obtained in a completely lawful intrusion, such as an inspection, should be firmly renounced by the courts. Perhaps the *Middleton* decision²⁸ is a step in this direction.

The 1981 decision of the Court of Military Appeals in the *Middleton* case²⁹ is far more acceptable to this writer than *Thomas*. Writing for a unanimous court,³⁰ Chief Judge Everett concluded that a commander conducting a traditional health and welfare inspection can legitimately be accompanied by a marijuana detection dog, because of the lack of any reasonable expectation of privacy on the part of service members during such an inspection. If the dog alerts to the presence of contraband in a closed locker, the inspection then becomes a search incident to a criminal investigation. Search of the locker requires either free and voluntary consent of the person whose locker it is, or else probable cause. In this case, the commander had previously been briefed on the dog's training, method of working, and reliability, and so had reasonable grounds

²⁸ 10 M.J. 123 (C.M.A. 1981).

²⁹ *Id.*

³⁰ Judges Cook and Fletcher concurred without separate opinions. 10 M.J. at 135.

to believe that drugs would be found upon a search of the locker indicated by the dog.

During the 1970's, instead of rejecting the exclusionary rule as incompatible with the special conditions of military service, or at least limiting the application of the rule as much as possible, the military authorities actually extended the scope of application of the rule. For example, concerning use of derivative evidence obtained while performing an unlawful search, such as verbal statements of a witness made at the place of the illegal search, the Supreme Court, in *U.S. v. Ceccolini*,³¹ decided that in such a case:

the exclusionary rule should be invoked with much greater reluctance where the claim is based on a casual relationship between a constitutional violation and the discovery of a live witness, than when a similar claim is advanced to support supervision of an inanimate object.

Instead of adopting this sensible rationale, the Army Court of Military Review decided lately in the case of *U.S. v. Duckworth*,³² that testimony of the driver of an automobile, whose identity was obtained through exploitation of an illegal stop and search, was subject to suppression. A similar result was reached by the Navy Court of Military Review in *United States v. Leiffer*,³³ in which the accused was convicted of various offenses in part as a result of the testimony of an accomplice whose identity had been discovered as a result of an illegal interrogation.³⁴

³¹ 435 U.S. 268, 280 (1978).

³² 9 M.J. 861 (A.C.M.R. 1980). The accused was convicted of various charges growing out of a theft of food from an Army messhall. His vehicle was searched and he was questioned about his identity without warnings by local police of the town of St. Robert, Missouri, near Fort Leonard Wood. The local police passed along to military authorities the information thus collected. The Army Court of Military Review considered that this search and questioning were illegal, and that the court-martial testimony of the accused based upon them would have to be suppressed. *Id.* at 865, 866.

³³ 10 M.J. 639 (NCMR 1980).

³⁴ Accused was convicted of various specifications of robbery, assault, sodomy, and wrongful appropriation. The accused was questioned at one point without warnings, and revealed the name of his accomplice, who in turn testified against the accused at trial. The trial judge ruled that the identity of the accomplice had

Military appellate courts are not alone to blame for perpetuating the exclusionary rule in its burdensome form. The executive authorities have gone a step beyond the courts and have created specific written rules of exclusion in the new Military Rules of Evidence.³⁵ Several provisions of these Rules explain the circumstances under which evidence must be denied admission because of illegality in its procurement.³⁶ It is noteworthy that the civilian Federal Rules of Evidence, upon which most provisions of the Military Rules are based, do *not* mention the exclusionary rule.³⁷

The expanded military use of the exclusionary rule is seen in the military appellate judgments cited above, and also in the new Military Rules of Evidence which differ from the Federal Rules in this regard. These authorities lead to the inevitable conclusion that the military criminal law system is somehow more religious than the Pope in its favorable attitude towards the rule. The courts of the United States, both civil and military, have spoken time and again of the unique and special status of the military legal system, in contrast with the civil one.³⁸ The Supreme Court has recognized that the military is "a specialized society separate from civilian society,"

been discovered illegally, but that he could testify anyway. This ruling of the trial judge is unexplained.

³⁵The Rules were prepared by a joint service committee within the Department of Defense and are largely based on the Federal Rules of Evidence, 28 U.S.C. App. (1976). The text of the Military Rules may be found in Appendix 18 to the Manual for Courts-Martial, United States, 1969 (Rev. ed.), and also in West's Military Justice Reporter, at 8 **M.J.** LXVII through CCXXXIX (1980). Discussion of the new rules may be found in the May 1980 symposium issue of *The Army Lawyer* and various later issues, and also in J. Woodruff, *Privileges Under the Military Rules of Evidence*, 92 Mil. L. Rev. 5 (spring 1981).

³⁶Mil. R. Evid. 304, 311, and 321(a)(2). The author believes that Mil. R. Evid. 321(a)(2) is a rare example and perhaps the only example of United States legislation or rules of court explicitly using the term "exclusionary rule."

³⁷Article III of the Federal Rules consists solely of two provisions concerning presumptions and applicability of state law in civil actions and proceedings. Fed. R. Evid. 301, 302, 28 **U.S.C.** App. (1976).

³⁸In the famous Vietnam era decision in *Parker v. Levy*, 417 U.S. 733 (1974), the Supreme Court stated that the "fundamental necessity for obedience and the consequent necessity for imposition of discipline may render permissible within the military that which would be constitutionally impermissible outside it." *Id.* at 743-44.

and that "its unique circumstances and needs justify a departure from civilian legal **standards**."³⁹ The military body differs greatly in its origins, tasks, duties, and basic mission from its civilian counterpart.⁴⁰

If the military system is truly so different from civilian society, consideration must be given, as a matter of high priority, to abolishing or drastically changing the exclusionary rule in courts-martial proceedings. The enforcement of law and discipline, especially when one is dealing with grave and daily-occurring offenses such as drug abuse, is absolutely essential in the military, for the benefit of all society. This being so, interference with such enforcement cannot be justified by reference to technical flaws of secondary importance occurring during the seizure of material evidence.

Questions concerning admissibility of evidence often arise in drug cases. In recent years, apprehension and prosecution of suspects for drug abuse has become an almost daily occurrence in the military. The harmful influence of drug abuse on the ability of the armed forces to perform their fundamental function, "to fight or be ready to fight," has become of critical importance.⁴¹ A rational legal system should do its best to avoid haphazard results, such as that an accused, who possessed heroin and intended to sell it to other members of his or her unit, may go scot free only because his commander had insufficient probable cause to order the search in which the heroin was found, or because the drug was uncovered during an inspection.

IV. ADMISSIBILITY OF EVIDENCE UNDER ISRAELI LAW

In trials and proceedings conducted before the criminal courts of the State of Israel, evidence is considered admissible as long as it is

³⁹Curry v. Secretary of the Army, 595 F.2d 873, 877 (D.C. Cir. 1973).

⁴⁰The differences are illustrated by the fact that "body" really does not describe civilian society, except in conventional figures of speech such as "body politic."

"United States v. Trottier, 9 M.J. 337 (C.M.A. 1980). This drug case dealt not with exclusion of evidence but with service connection. The Court of Military Appeals upheld the conviction of a member of the Air Force who sold drugs off post to a fellow servicemember for resale on post. "Such conduct is inimical to a fit and ready armed force; and it is . . . appropriately subject to prosecution and punishment by the military." *Id.*, at 353.

relevant to issues arising in the case. Evidence is not excluded merely because it was obtained by the police as a result of a search not carried out in accordance with applicable rules and regulations, or as a result of other unlawful activities of, or methods of investigation employed by, the police. Generally speaking, evidence may be excluded from consideration at trial only for irrelevance. In this regard, the Israeli legal system follows the English system, and does not have an American-style exclusionary rule *per se*.

The foregoing applies mainly to *physical* evidence. The case is quite different when the prosecution seeks admission into evidence of a confession of the defendant. Statutory and case law in the State of Israel deal extensively with the admissibility of confessions, and with the rules which apply to the taking of confessions from suspects. In Israel, as in the American legal system, the suspect has the right to remain silent and otherwise to refrain from incriminating himself. He must be warned before making a statement. He is entitled to a lawyer. He must be brought before a judge within **48** hours from his apprehension by the police. These and other rights of suspects are based upon strict rules relating to the conduct of investigations by the police, with special reference to the taking of confessions from suspects. According to law, a confession will be admissible in court only if the prosecution presents evidence showing the circumstances under which the confession was given, and if the court "is convinced that the confession was free and voluntary."⁴²

When considering admissibility of a confession, the court will examine the behavior of the investigators at the time of the interrogation, and in particular their compliance with the rules requiring that they warn the suspect and advise him of his rights when they arrest him. The failure of the government to establish that all the requirements were fulfilled will not by itself lead to rejection of the confession as inadmissible. The fact that the accused was denied one or more of his rights would merely be taken into consideration by the court in weighing whether the confession was a product of the "free and voluntary" will of the accused and therefore admissible, or the confession was coerced from the accused, which will result in its rejection.

⁴² Art. 12, Ordinance of Evidence (New Draft) (1979).

Thus, under the legal systems prevailing in both Israel and England,⁴³ the general rule is that relevant and authentic physical evidence, even though achieved by unlawful means, is admissible for consideration by a criminal trial court.

The rule is much the same in the military justice system of Israel: All relevant evidence is admissible, regardless of how it was ob-

⁴³Sir Rupert Cross, *Evidence* 276-85 (4th ed. 1974). Sir Rupert is an English solicitor and was formerly Vinerian Professor of English Law at the University of Oxford.

The British government recently sponsored a high-level review of British police practices and the law governing admissibility of evidence in criminal trials. The review was conducted by the Royal Commission on Criminal Procedure, established in 1978. A summary of the Commission's recently released report is presented in "Police Powers in England: Report of the Royal Commission on Criminal Procedure," 67 A.B.A.J. 732-735 (June 1981), by Michael Zander, a professor of law at the London School of Economics and Political Science. Mr. Zander writes as follows concerning the Commission's rejection of the American exclusionary rule:

The commission . . . proposed a major change in the area of police questioning by recommending the abandonment of the classic common-law rule that a statement obtained as a result of a threat or a promise made by a person in authority is inadmissible because it is not voluntary. . .

The commission's proposal is that statements should be automatically inadmissible if made after violence, the threat of violence, or inhuman or degrading treatment . . . Any other form of illegality or impropriety in the collection of statements, admissions, or other evidence would not render the evidence inadmissible, but the judge would have to give the jury an appropriate warning about the dangers of relying on it.

The commission rejected the American exclusionary rule on the double ground that there was little evidence that it inhibited malpractice by the police and at the same time it clearly resulted in the loss of relevant evidence. If the police misbehaved themselves, the remedy should be internal police disciplinary procedures, initiated possibly by a complaint by the victim, civil actions for damages, or, in extreme cases, criminal prosecution.

The commission considered whether to adopt the Australian Law Reform commission's "reverse onus" exclusionary rule, under which illegally obtained evidence would be inadmissible unless the prosecution could satisfy the court that it should be admitted in the public interest. It did not favor this rule since it leaves the judges with a vague discretion that they would administer inconsistently.

Id., at 733.

1981] EXCLUSIONARY RULE: ISREALI-U.S. COMPARISON

tained. Basically, the rules of evidence followed in the civil courts of Israel apply also in courts-martial.⁴⁴

Instructions for investigating officers are set forth in Articles 266 through 272 of the Israel Military Justice Law. These instructions apply when such officers take statements from criminal suspects. For example, the investigating officer is obliged to warn the suspect and to inform him of his right to remain silent.⁴⁵ The law also specifies the exact contents of the warning,⁴⁶ and prohibits the investigator from examining the accused against his will.⁴⁷

A very important qualification to the above instructions is set forth in Article 478 of the Military Justice Law:

The fact that a statement by an accused person containing a confession has been taken otherwise than in accordance with the rules set out in sections 266-272, shall not prevent the court from ruling that the accused has made the confession voluntarily.

⁴⁴It is so provided in Article 476 of the Israel Military Justice Law (1955) (hereinafter cited as M.J.L.), which states in relevant part:

Save as otherwise provided in this law, the rules of evidence binding in criminal matters in the law courts of the State, are binding also in courts-martial . . .

The original text of this law is in the Hebrew language. The author of this article has translated this provision and all other quotations from Israeli judgments and statutes used herein.

Article 476 resembles Article 36(a) of the Uniform Code of Military Justice, which states that court-martial procedures:

may be prescribed by the President by regulations which shall, so far as he considers practicable, apply . . . the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which may not be contrary to or inconsistent with [the Uniform Code of Military Justice].

10 U.S.C. § 836(a) (1976).

⁴⁵Art. 266, M.J.L., note 44, *supra*.

⁴⁶Art. 267, M.J.L.

⁴⁷Art. 269, M.J.L.

In enacting this article, the legislature made it absolutely clear that there is no place in the military legal system for a rule of automatic exclusion from evidence of confessions not obtained in strict accordance with the law. As mentioned previously, the same principle applies in the civil legal system as well, but only in the military code is there an explicit written rule whose sole purpose is to preclude the application of an exclusionary rule such as exists in the American system.

The problem of when to exclude relevant evidence continues to trouble the judiciary in Israel just as in the United States, even though in the opposite direction, and every now and then voices call for reassessment and reevaluation of the Israeli rule. For example, it has lately been argued by a commentator that the Supreme Court of Israel has recently softened its negative attitude toward the exclusionary rule. This is said to be shown by occasional decisions in which the court has warned the police and prosecutors that the rule might be implemented in extreme cases of investigative misbehavior. This viewpoint will be discussed later.

In the case of *Abu-Madigam v. The State of Israel*,⁴⁸ Justice Haim Cohn of Israel's Supreme Court commented at length on the American exclusionary rule, its purposes, and its practical effect. He noted that the Supreme Court of the United States excludes illegally obtained confessions to deter police misconduct. Paraphrasing the American Supreme Court, Justice Cohn states that "it is better that a dangerous criminal will go free [than that the court] ratify in any way an illegal, sometimes brutal, police investigation." Justice Cohn notes further, however, that there are many doubts that such an approach effectively deters policemen from engaging in misconduct.

Citing Professor Oaks' article,⁴⁹ Justice Cohn mentions that even in the United States there is now a strong current of opinion favoring abolition of the exclusionary rule. The justice concludes that, in Israel,

⁴⁸33 Piskei Din, Part 3, at 376, 382. The Piskei Din (hereinafter cited P.D.) are reports of the judgments of the Supreme Court of Israel.

⁴⁹Oaks, *supra* note 14, at 672.

in the current situation of overwhelming crime, we cannot afford the luxury of rejecting valid evidence only because of the illegal way in which they were obtained. The legislator—the same **as** the judiciary—must increase the effectiveness of punishing the violent policeman and order him to pay damages. The simple lesson to be learned from the negative experience of excluding such evidence is that this is not the right way—neither to prevent police brutality, nor to cause deterrence of violent policemen or to fight against crime.⁵⁰

In C.A. 260/78, *Saliman v. The Attorney General*,⁵¹ Justice Aharon Barrack stated as his opinion that:

It is important to emphasize that our current system—based on the English law—is not the only system to be applied, and the power to change it lies in our hands. It is well known that the attitude of the courts in the United States is different and they frequently order exclusion of confessions obtained in violation of the law. In creating this rule, the courts of the United States were of the opinion that that is the only way to “educate” the police, urging them to act lawfully.

Justice Barrack expressed his hope that the court’s warning to the police would be effective, and that there would be no need to take further measures in the future.

An interesting case in this context is *Meiry v. The State of Israel*,⁵² where the police decided to perform a photographic identification after the accused refused to attend a lineup. Even though the police knew that the accused had a defense counsel at that time, the counsel was not invited to take part in the identification. The District Court of Tel-Aviv decided that the results of the identification were admissible, and based the accused’s conviction upon this evi-

⁵⁰ Abu-Madigam v. The State of Israel, *supra* note 48, at 383.

⁵¹ 33 P.D. Part 2, at 204, 207. See note 48, *supra*.

⁵² C.A. 559/77, 32 P.D., Part 2, at 180.

dence.⁵³ On appeal, the Supreme Court of Israel reversed, as follows:

Maybe the police investigators will learn in this way . . . to perform their duties according to this court's direction. We are not interested in giving orders or interfering in police investigations . . . but we are concerned with preserving human rights and encouraging the individual's liberties, as they should be preserved in a democratic society where the law dominates. If the policemen, who are in charge of enforcing the law, cannot or will not perform their duties according to this court's directive, they have no right to complain against criminals themselves for breaking the law . . . we are not willing to give any probative value to the photographic identification, in which the accused was identified in the absence of the defense counsel . . . the appellant is entitled to have the benefit of the doubt⁵⁴

Commenting on the *Meiry* judgment, Mr. Moshe Ben-Ze'ev⁵⁵ argues that this decision of the Supreme Court of Israel is based mainly on the theory of the American exclusionary rule. He is aware that the Court did not explicitly mention the exclusionary rule or even imply an acceptance of that rule. Mr. Ben-Ze'ev states that this fact will create difficulties for the development of clear case law after this judgment. Nevertheless, his opinion is that the—

judicial logic is, undoubtably, to the side of the American judgments. We are not dealing with the weight of the evidence that entered legally the gates of the court, but with

⁵³ No statute or regulation requires the police to invite a defense counsel to participate in a lineup or photographic identification. However, in past cases the Supreme Court of Israel has ordered that the police adopt this practice as a part of their routine procedure.

⁵⁴ C.A. 559/77, 32 P.D., Part 2, at 182.

⁵⁵ Mr. Ben-Ze'ev is a former attorney general for the State of Israel.

⁵⁶ Ben-Ze'ev, *Evidence Illegally Obtained—Is the Road Open for the Exclusionary Rule?*, 32 HAPRAKLIT 466 (No. 4, Oct. 1979). HAPRAKLIT is Israel's national bar review.

locking the gates and excluding the evidence on the threshold.⁵⁷

The article concludes with an expression of the author's hopes, "Today the American rule has a reasonable chance to prevail over its English counterpart,"⁵⁸ in Israel's legal system.

The present writer does not agree with Mr. Ben-Ze'ev's interpretation of the *Meiry* decision, and does not share his hope for a change in the Court's hitherto negative attitude toward implementation of the exclusionary rule.

Special attention must be paid to the fact, noted above, that in *Meiry* the Supreme Court made no mention, overt or implicit, of the exclusionary rule. In other cases the Court has not hesitated to do so explicitly.⁵⁹ Although Mr. Ben-Ze'ev is aware of this, he tries to argue by logical extension that the American exclusionary rule has prevailed in this case.

In the opinion of the present writer, the Supreme Court of Israel intentionally ignored the exclusionary rule in *Meiry* and the rule was not applied to the case. The rationale of the Court's judgment, stated by the Court in so many words, is simply that the *probative value* of the evidence in this case is negated by the misconduct of the police leading to the absence of defense counsel from the identification proceedings. The evidence was deemed unbelievable because of the circumstances under which it was procured. The Supreme Court stated explicitly that the issue was minimization of the weight of the evidence,⁶⁰ in this case, minimization to a value of zero. No mention whatever is made of initial exclusion of the evidence from consideration by the judge because of denial of the accused's right to counsel.

⁵⁷ 32 HAPRAKLIT at 468.

⁵⁸ 32 HAPRAKLIT at 471.

⁵⁹ Examples include the *Abu-Madigam* case, note 48, *supra*, and *Saliman*, note 51, *supra*. The opinions of the Court in both *Abu-Madigam* and *Saliman* were rendered by Justice Cohn.

⁶⁰ C.A. 559/77, 32 P.D., Part 2, at 182. The Court stated, "It is time to reduce the weight of evidence unlawfully obtained, until nullifying it."

The *Meiry* decision of the Supreme Court of Israel is consistent with the traditionally negative attitude of Israeli law toward the exclusionary rule. At the same time, it leaves in the discretion of the trial judge the decision on the probative value of evidence obtained in an illegal manner. In sum, the road for implementation of the American exclusionary rule in Israel's legal system is, fortunately, still closed.

V. DISCUSSION

As a bystander, who was not very familiar with the American legal system until late 1980, the author must admit that the broad application of the exclusionary rule in the United States struck him at first glance as unnecessary, inappropriate, and altogether unjustified. Subsequent study and observation have only confirmed the validity of this reaction.

As a result of application of the exclusionary rule, not only is evidence excluded from the courtroom which is relevant, authentic, and usually objective, if not always the *best* evidence, but judges themselves are arbitrarily precluded from examining and evaluating such relevant evidence. A case might be made for not allowing a jury or board of nonlawyer officers to consider certain evidence, but the same does not apply to judges. Judges have many powers and the authority to decide important, genuine, and vital disputes while occupying the bench. A judge must make every working day hundreds of decisions affecting the basic rights of the individual, such as life, liberty, and property. If the judge is routinely entrusted with such awesome responsibilities, one can hardly understand why he or she is barred from examining certain types of evidence, moreover, barred by a rule which is not ultimately based on the Constitution of the United States, and without which the American nation managed to survive for about **123 years**.⁶¹

The basic and fundamental function of the judiciary is to try those people against whom formal charges have been preferred, to convict the factually guilty and acquit the factually innocent. It is not the

⁶¹The first ten amendments to the Constitution, the Bill of Rights, were ratified on December 15, 1791. The exclusionary rule was first enunciated by the Supreme Court in the *Weeks* case, decided in 1914.

task of the courts to free the guilty accused and to convict, by implication, other people, especially the police investigators, who did not occupy the defendant's dock. Moreover, it is very difficult to see among the courts' admittedly broad and vast authority any power which permits them, in effect, to take vengeance against society as a whole, because one of society's protectors sinned.

Assuming that a policeman blundered or did wrong, either deliberately or by mistake, why should the criminal be allowed to flee without any punishment after his or her guilt was proved beyond a reasonable doubt based upon presentation to the court of evidence which is relevant and reliable, even though procured in a technically illegal manner? Where is the legal or factual connection between the misconduct of the policeman and the crime of the defendant? Will the next step be that contempt of court on the part of a prosecutor will lead to immediate dismissal of the charges, in order to "educate" prosecutors to behave themselves? It is only natural and plain that one evil, that of misconduct, cannot be corrected by another one, that of releasing the guilty.

The late Justice William O. Douglas, in his book *The Court Years*, approaches the exclusionary rule as follows:

Three possible sanctions could have been used: Civil action against the violators, criminal prosecution, or exclusion of the illegally obtained evidence. Of these, only the last is a real sanction.⁶²

One can hardly contend that the exclusionary rule is not a "real sanction," but it is aimed at the wrong target. No benefit for the public can be found in such a sanction.

The author's purpose is neither to suggest remedies for an innocent party who has truly suffered because of a public official's misconduct, nor to urge those in positions of prosecutorial responsibility to take criminal action against those few who throw discredit

⁶² William O. Douglas, *The Court Years* at 387 (1980). During his many years on the Supreme Court, Justice Douglas was famous for his liberal positions on a great variety of civil rights issues and other public controversies.

upon the civil service. It is only pointed out that such alternatives are available, and there are plenty of them.⁶³

The basic approach to the problem of what to do about illegally obtained evidence should be changed. The focus of the courts' attention should shift away from a technical rule of procedure, heretofore applied in an unjustifiable manner to prevent evidence from passing a courtroom's threshold, towards a more logical type of scrutiny. The judge should be allowed to exercise his or her discretion in empirical evaluation of the *substance* of the evidence, i.e., its weight, credibility, reliability, and other characteristics, the same as with any other evidence. There are many factors which the judge must take into account when making his decision on the merits of the issues in a case. These include the following:

A. The gravity of the offense committed by the defendant should be compared with the extent of the misconduct of the law enforcement officials involved. The more serious the crime and the more minor the police misconduct, the more the court should be inclined to admit the evidence.

B. The state of mind of the government officials carrying out the proceedings should be examined. Did the policeman intentionally and deliberately act contrary to regulations in carrying out a search he or she knew or had reason to know was illegal? Was the commander of the installation acting in good faith when he or she ordered an inspection or a search in a soldier's quarters? Courts should be more generous in admitting evidence obtained from a search which though technically illegal was ordered or performed by an official acting in good **faith**.⁶⁴

⁶³See discussion of alternatives in *Bivens v. Six Unknown Federal Agents*, 403 U.S. 388 (1971), and in the authorities cited in notes 9, 10, 14, and 16, *supra*.

⁶⁴At least one Supreme Court justice favors a good faith exception to the exclusionary rule. Justice White, dissenting in *State v. Powell*, 428 U.S. 465, 540 (1976), said:

When law enforcement personnel have acted mistakenly, but in good faith and on reasonable grounds, and yet the evidence they have seized is later excluded, the exclusion can have no deterrent effect.

C. The location where the search takes place, and the individual's reasonable expectation of privacy, comprise a legitimate factor affecting the admissibility of evidence. However, it should be recognized that a military barracks is essentially a public place, and that its occupants should have no significant expectation of privacy. The same would not be true of one's private bedroom in off-post quarters owned or leased by the occupant rather than by the government.

D. The character of the victim of an unlawful search should be considered. Is he a notorious drug pusher with perhaps fifteen arrests to his discredit, or is he a seventeen-year-old schoolboy, suspected of his first offense, stealing a classmate's bicycle?

These circumstances and others should be considered thoroughly by the judge, who should be assumed capable of balancing, on the one hand, the interest of the individual in preserving his or her privacy, and on the other hand, the public interest in the suppression of crime and the promotion of public safety and good order.

The way in which evidence was obtained ought not to be a primary factor in determining whether relevant evidence should be denied consideration by the court. Rather this should be merely one criterion among several whose purpose is to help the judge to decide the probative weight to be accorded to the evidence. The evaluation of evidence should not be hampered by application of an arbitrary and highly technical rule barring authentic evidence from entering the courtroom. Rather, this task of evaluation should be understood to involve a wide spectrum of considerations, the balancing of which is best left to the discretion of the judge.

VI. CONCLUSION

The time is ripe for the courts and legislatures of the United States to conform themselves to the practice of other countries with common-law derived legal systems, such as England, Canada, and Israel, and to abolish the exclusionary rule. This will gain for American courts the opportunity to fully consider relevant and authentic evidence, and to evaluate such evidence in terms of its own reliability and credibility. No longer should undue emphasis be placed on such extraneous matters as the manner in which the evidence is obtained, a consideration usually irrelevant to the question of what

the evidence proves. This is the only way to avoid unreasonable, unnecessary, and positively dangerous threats to society from the release of the guilty.

Application of the exclusionary rule in its present form all too often produces hopelessly irrational outcomes. One particularly outrageous example is the acquittal of a person accused of kidnapping and murdering a fourteen-year-old girl, only because the attorney general who signed the search warrant also directed the investigation and therefor was technically not a "neutral and detached magistrate."⁶⁵ An all too common occurrence in the military setting is that a drug possessor, perhaps a dealer, who is a servicemember, must be permitted to walk about free and happy on his post although a large quantity of heroin was found in his locker, only because his commander, when ordering the search, acted upon "reasonable suspicion" not amounting to "probable cause."

This author deeply hopes that the Supreme Court of Israel will not abandon its traditional position of not applying the exclusionary rule in Israel's legal system. If, as discussed in section IV, above, an inclination to alter this position has been implied in the Court's recent decisions, it is this writer's humble prayer that the project will be shelved immediately, and that such a hazardous step leading toward an undesirable destination will never be taken.

In times of steadily increasing and overwhelming crime, it is the necessity of the hour to nullify the exclusionary rule. It is urgently recommended that the courts in the United States, both civil and military, will make abolition of the rule their target, in the same way those courts created it a few decades ago. To paraphrase the words of the United States Supreme Court in the case of *Berger v. United States*,⁶⁶ the Court is sometimes the creator of the law, "the twofold aim of which is that guilt shall not escape or innocence suffer."

⁶⁵ *Coolidge v. New Hampshire*, 403 U.S. 443 (1971).

⁶⁶ *Berger v. United States*, 295 U.S. 78, 88 (1935). In *Berger*, a counterfeiting case, the Supreme Court decided that grossly improper prosecutorial questioning and argument misled the jury, possibly resulting in the conviction of an innocent man. The Court said that a United States Attorney is "the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer." *Id.*

BOOK REVIEW:

LAWYER'S LAWYER: THE LIFE OF
JOHN W. DAVIS*

William H. Harbaugh, *Lawyer's Lawyer: The Life of John W. Davis*. New York City, New York: Oxford University Press, Inc., 1973. Pages: xvi, 648. Price: \$22.50. Publisher's address: Oxford University Press, Inc., 16-00 Pollitt Drive, Fair Lawn, N.J. 07410.

*Reviewed by Major Bryan H. Schempf. ***

The name John W. Davis probably is unfamiliar to most American lawyers today. However, for over fifty years, Davis was a distinguished member of the profession. From his beginning as a small town lawyer, he became a law professor, a member of Congress, the Solicitor General, Ambassador to England, Democratic Presidential candidate in 1924, and member of a leading Wall Street law firm. He argued more cases before the Supreme Court than anyone else during this century. His biography, *Lawyer's Lawyer*, captures the essence of Davis and his place in American legal history.

This book is not just an historical biography. What is distinctive about this book is its emphasis on legal history and legal analysis. The analysis of the development and demise of, and Davis' role in, the Farm Credit Act is but one example. What is remarkable is that

*The opinions and conclusions presented in this book review, and in the book itself, are those of the authors and do not necessarily represent the views of The Judge Advocate General's School, the Department of the Army, or any other governmental agency.

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the book was written by a non-lawyer. The author, William H. Harbaugh, is Professor of History at the University of Virginia, and his legal education consisted of a one-year appointment as Senior Fellow at the Yale Law School during which time he audited various courses.

This book is important to the military lawyer because it explores the effect of a retainer on the perceptions of a lawyer. While there is no monetary retainer for a staff judge advocate, a similar, dependent relationship can be established instead by officer evaluation reports.

In Davis' case, his early experience representing the United Mine Workers in contesting anti-union injunctions influenced his role as Congressional draftsman of the Clayton Act, an act which severely restricted the use of injunctions. During the 1920's and 1930's however, as an influential Wall Street corporation lawyer, he never criticized and perhaps never recognized management's "sustained offensive against labor." The man who as Solicitor General had defended the expansion of federal power in economic regulation, civil rights, wage regulation and anti-trust later worked tirelessly to stem the New Deal.

Perhaps Davis' father, himself a lawyer, was correct in once observing that acceptance of a regular retainer subjects a lawyer to unconscious influence and restricts political and professional independence. The Davis biography implicitly provides warning to all military lawyers of the difficulty in maintaining professional independence.

Davis' views on law and government form a timely portion of the book. His views were influenced by law professors who instilled a love of the profession. Davis' law class oration reflected their influence, for he exhorted his classmates to preach "the doctrine of Reverence for the law." Davis believed that lawyers were technicians who "lubricate the wheels of society by implementing the rules of conduct by which the organized life of men must be carried on." But because lawyers are members of a profession, he also believed that they are duty-bound to represent those who seek their services.

Davis always thought of himself as a Jeffersonian Democrat adhering to the principle that the least government is the best. Af-

ter his service as Solicitor General, he consistently decried the expansion of the federal government as infringing on states' rights. During his Presidential campaign, he favored reduction of the federal budget. "It is healthy for every government to be kept on a restricted if not a starvation diet." Four years before the New Deal, Davis wrote, "Little by little, paternalism fastens its grasp upon the country, and little by little the practice of local self-government fades away. Somewhere, sometime, a halt must be called." Only recently have such views regained currency.

Davis displayed both admirable and displeasing personal qualities. His mother fostered mental discipline and a superb memory, skills which later served Davis well. Although he was reserved and a private man, he was beloved by friends and associates because of his charm and interest in others. He lacked ambition for power. Explaining why he refused to campaign for a city attorneyship, he remarked characteristically that "there are still times when the office should seek the man."

However, the author has not glossed over Davis' less pleasing qualities. While Davis may not have been after every dollar in sight, clearly one of his goals was financial and physical comfort. Even measured by today's standards, Davis was well compensated. More troubling on occasion was Davis' legal ethics. In defending his individual or corporate clients to the utmost, Davis apparently never considered any public interest involved. By presenting qualities and faults, the author has presented a genuine person rather than a tinsel hero.

A technique which Professor Harbaugh used effectively was to organize the book into themes rather than chronological order. For example, one chapter discussed Davis' professorship and marriage, and the next chapter described his making as a lawyer even though much the same period of time was involved. This thematic approach permitted Professor Harbaugh to link related events which were separated in time. The disadvantage of this organization was the continual shifts in time. For example, one chapter encompassed the period **1929-1939**, and the following chapter returned to **1933**. Only once was this a problem. In describing Davis' representation of **J. P. Morgan & Co.** before a Senate subcommittee, Professor Harbaugh wrote, "Just as he had defended Louis Levy to the limit of the law" The Levy case had been described in the preced-

ing chapter, but chronologically, the Levy case followed the Morgan inquiry. Consequently the comparison was historically inaccurate. In the end, Davis comes to life in a series of detailed, still-life portraits.

Professor Harbaugh has produced an eminently readable book about an important figure in American Law. His book is a significant contribution to our legal history. Because many of the controversies in which Davis participated remain active today, non-lawyers also can read this biography with interest. This is a **book** not to be missed.

PUBLICATIONS RECEIVED AND BRIEFLY NOTED

I. INTRODUCTION

Various books, pamphlets, tapes, and periodicals, solicited and unsolicited, are received from time to time at the editorial offices of the *Military Law Review*. With volume 80, the *Review* began adding short descriptive comments to the standard bibliographic information published in previous volumes. These comments are prepared by the editor after brief examination of the publications discussed. The number of items received makes formal review of the great majority of them impossible.

The comments in these notes are not intended to be interpreted as recommendations for or against the books and other writings described. These comments serve only as information for the guidance of our readers who may want to obtain and examine one or more of the publications further on their own initiative. However, description of an item in this section does not preclude simultaneous or subsequent review in the *Military Law Review*.

Notes are set forth in Section IV, below, are arranged in alphabetical order by name of the first author or editor listed in the publication, and are numbered accordingly. In Section II, Authors or Editors of Publications Noted, and in Section III, Titles Noted, below, the number in parentheses following each entry is the number of the corresponding note in Section IV. For books having more than one principal author or editor, all authors and editors are listed in Section 11.

The opinions and conclusions expressed in the notes in Section IV are those of the editor of the *Military Law Review*. They do not necessarily reflect the views of The Judge Advocate General's School, the Department of the Army, or any other governmental agency.

11. AUTHORS OR EDITORS OF PUBLICATIONS NOTED

Beer, Francis A., *Peace Against War: The Ecology of International Violence* (No. 1).

Birnbaum, Myron L., Colonel, editor, and Judge Advocates Association, *J.A.A. Newsletter* (No. 23).

Brittin, Burdick H., *International Law for Seagoing Officers* (4th ed.) (No. 2).

Bruno, Carole A., *Paralegal's Litigation Handbook* (No. 3).

Bruton, Henry J., *The Promise of Peace: Economic Cooperation Between Egypt and Israel* (No. 4).

Burton, William C., *Legal Thesaurus* (No. 5).

Carlisle, Rodney P., *Sovereignty for Sale: The Origins and Evolution of the Panamanian and Liberian Flags of Convenience* (No. 6).

Carpenter, William M., Richard B. Foster, and James E. Dornan, Jr., editors, *Strategy and Security in Northeast Asia* (No. 14).

Cibinic, John, Jr., and Ralph C. Nash, Jr., *Federal Procurement Law, Volume II* (No. 38).

Coletta, Paolo E., *A Bibliography of American Naval History* (No. 7).

Court of Military Appeals, U.S., and the Judge Advocates General of the Armed Forces, *Citators and Index to Court-Martial Reports, Covering Volumes 2640* (No. 24).

Coyne, Robert, and Bruce A. Levin, *Tort Reform and Related Proposals: Annotated Bibliographies on Product Liability and Medical Malpractice* (No. 30).

Crouch, Richard E., *Interstate Custody Litigation: A Guide to Use and Court Interpretation of the Uniform Child Custody Jurisdiction Act* (No. 8).

Danilov, Dan P., *Immigrating to the U.S.A.* (3d ed.) (No. 9).

Department of State and Joanne Reppert, *Background Notes* (No. 10).

Dornan, James E., Jr., Richard B. Foster, and William M. Carpenter, editors, *Strategy and Security in Northeast Asia* (No. 14).

Economist Newspaper, Ltd., *The World in Figures* (No. 11).

Edelman, Charles D., and Ilene C. Siegler, *Federal Age Discrimination in Employment Law: Slowing Down the Gold Watch* (No. 12).

Erlanger, Howard S., and Douglas A. Klegon, *Socialization Effects of Professional School: The Law School Experience and Student Orientation to Public Interest Concerns* (No. 13).

Foster, Richard B., James E. Dornan, Jr., and William M. Carpenter, editors, *Strategy and Security in Northeast Asia* (No. 14).

Gallagher, Andrew K., *The Law of Federal Negotiated Contract Formation* (No. 15).

Gill, Kay, and Anthony T. Kruzas, editors, *Government Research Centers Directory* (No. 28).

Guinther, John, *Winning Your Personal Injury Suit* (No. 16).

Hale, William Storm, and Walter E. Hurst, *How to Start a Record or Independent Production Company* (No. 19).

Heinz, John P., and Edward O. Laumann, *The Legal Profession: Client Interests, Professional Roles, and Social Hierarchies* (No. 17).

Hertzburg, Michael, Harvey Kaye, and Paul Plaia, Jr., *International Trade Practice* (No. 26).

Hough, Jerry F., *Soviet Leadership in Transition* (No. 18).

Hurst, Walter E., and William Storm Hale, *How to Start a Record or Independent Production Company* (No. 19).

Independent Commission on Disarmament and Security Issues, *The SALT Process: The Global Stakes* (No. 20).

Internal Revenue Service, *Official IRS Tax Audit Guide* (No. 21).

Jorg, N., *Recht voor Militairen* (No. 22).

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IV. PUBLICATION NOTES

1. Beer, Francis A., *Peace Against War: The Ecology of International Violence*. San Francisco, California: W. H. Freeman and Company, 1981. Pages: xxvi, 447. Price: \$19.95 (hard cover); \$9.95 (paperback). Bibliography; indices of names and topics. Publisher's address: W.H. Freeman and Company, 660 Market Street, San Francisco, CA 94104.

In this lengthy work, the author analyzes war from the point of view of a professional social scientist. He discusses the nature of war and the sources of our knowledge about it, the major causes of both peace and war, what the future holds, and what can be done to promote peace. The author is opposed to war, and hopes to advance the cause of peace through his book. The book is academic in its orientation, and is aimed primarily at professional social scientists and students.

The book is organized in six chapters. The introductory chapter, "Epidemiology," explains the author's methodology, his assumption that war is like a disease and that it can be fruitfully studied by application of the scientific method to the data at hand. The next two chapters provide statistical information about war, its causes, duration, and so forth, down through the centuries, and about the role of international law and organizations, national government, and exchange and communications between countries, in promoting peace and war. Chapters 5 and 6 discuss polarization and its component elements, differentiation, inequality, and instability, and also milita-

rization, as causes or circumstances tending to promote war. The concluding chapter discusses choices among various available policies.

Some discussion of international law is provided. Brief mention is made of the law of peace as a means of dispute settlement, the law of war, including the concept of just war, and various "legal blocs," groups of countries related to each other through treaty systems and shared attitudes, values, and goals.

For the convenience of readers, the book offers a detailed table of contents, tables of figures and charts used, an extensive bibliography, and a two-part index of names and topics. There is extensive use of charts, tables, and graphs. Footnotes are collected together at the end of the text.

The author, Francis A. Beer, is a professor at the University of Colorado.

2. Brittin, Burdick H., *International Law for Seagoing Officers* (4th ed.). Annapolis, Maryland: United States Naval Institute, **1981**. Pages: xvi, **483**. Price: **\$21.95**. Seventeen appendices, glossary, bibliography, and subject-matter index. Publisher's address: Marketing Department, Naval Institute Press, U.S. Naval Institute, Annapolis, MD **21402**.

International law grows more complex and acquires more practical importance for more people with each passing decade. The law of war constitutes a relatively small portion of this body of law. The law of the sea, or maritime law in domestic terms, has much greater significance under normal circumstances. The book here noted deals with these and many other subjects from the point of view of non-lawyer officers of the Navy and merchant marine, and others concerned with international transactions, especially shipping and travel on the world's sea lanes.

The first edition of this widely recognized work was published in **1956**, and the other editions followed in **1960** and **1972**. These editions were translated into several foreign languages. The new fourth edition has a foreword by Elliot L. Richardson, who, among his many public posts, has served as a senior United States representative to the Law of the Sea Conference.

The book is organized in twelve chapters. These discuss such concepts as sources of international law, sovereignty, territoriality, the status of ships and persons, the regime of the high seas, armed conflict, and international organizations and their means of enforcing international law. Seventeen appendices are provided, which set forth the texts of various treaties and other international documents. Included are the Panama Canal treaties of 1977, various draft declarations prepared by the Law of the Sea Conference, the North Atlantic Treaty, and several others.

The author, Burdick H. Brittin, is a retired Navy Captain and former judge advocate. In addition, he spent eleven years with the State Department after leaving active duty. Since the mid-1950's, he has worked extensively in the law of the sea in a variety of capacities. He served as the first director of the International Law Division of the Office of the Judge Advocate General of the Navy, and was involved with the Third Law of the Sea Conference.

3. Bruno, Carole A., *Paralegal's Litigation Handbook*. Englewood Cliffs, N.J.: Institute for Business Planning, Inc., 1980. Pages: xxiv, **544**. Appendix; index. Publisher's address: Institute for Business Planning, Inc., IBP Plaza, Englewood Cliffs, N.J. 07632.

Busy trial lawyers can often benefit as much or more from the skills of a competent paralegal than from the work of junior associates. Paralegals are able to carry out many complex tasks usually considered part of lawyering, including locating and interviewing witnesses and preparing them for trial, drafting trial documents, conducting research of all types, performing investigatory work, and accomplishing a host of higher-level clerical tasks essential to trial preparation. In short, the paralegal has some of the skills of an attorney, together with some of the higher-level skills of a legal secretary and office manager.

The book here noted is a textbook or manual for the use of paralegals specializing in litigation, and also for attorneys who want to know what paralegals should be able to do, and to train their office staffs in paralegal skills. It is organized in sixteen chapters, each dealing with a major phase of paralegal work. A few of the titles are, "How to Handle and Interview Clients Successfully," "Concise Guide to Courts, Jurisdiction and Venue," and "Methods to Facilitate Discovery." Others include, "When and How to Pre-

sent Motions, Demurrers, Stipulations, and Notices to the Court," "How to Assist the Attorney to Prepare for Trial," and "How to Use the Startling Power of Assertiveness."

The book offers a foreword and an explanatory introduction, "What this Book Will do for You," as well as a detailed table of contents. The text is organized in numbered sections. Dozens of sample forms, checklists, and legal documents are scattered throughout the text. A fourteen-part appendix is provided, setting forth the texts of various codes of ethics for paralegals, lists of paralegal associations and schools, interest rate tables, lists of abbreviations, and other information. The book closes with a subject-matter index.

The author, Carole A. Bruno, is a practicing free-lance paralegal, working in Atlanta, Georgia. She has been employed in the past by a number of law firms there and in California. She has been very active in state and national paralegal organizations, and has given speeches and written articles on paralegal work. Ms. Bruno is the founder of Paralegal Support Services, Inc., a placement agency.

4. Bruton, Henry J., *The Promise of Peace: Economic Cooperation between Egypt and Israel*. Washington, D.C.: The Brookings Institution, **1981**. Pages: viii, **29**. Price: \$3.00. Paperback. Publisher's address: Director of Publications, The Brookings Institution, **1775** Massachusetts Ave., N.W., Washington, D.C. **20036**.

Egypt's President Sadat initiated peace negotiations with Israel in **1977** which are still continuing despite the difficulties which beset the Middle East. The author of this brief pamphlet, described as a "staff paper," argues that the two countries can solidify their new favorable relations by trading with each other primarily in the areas of agriculture and small-scale industry. The United States can help promote such trade by providing funding, equipment, and perhaps technical advisors to assist local research and development efforts, but American effort should be minor and low-key in appearance, to avoid stifling local initiative.

The author is a professor of economics at Williams College and an economic consultant to the Egyptian government. His work on this paper was supported by a Ford Foundation grant. The Brookings Institution describes itself as "an independent organization devoted to nonpartisan research, education, and publication in economics,

government, foreign policy, and the social sciences generally,” whose “principal purposes are to aid in the development of sound public policies and to promote public understanding of issues of national importance.”

5. Burton, William C., *Legal Thesaurus*. New York City, New York: Macmillan Publishing Co., Inc., **1980**. Pages: **1058**. Price: \$35.00. Index. Publisher's address: Macmillan Publishing Co., Inc., 200 D Brown Street, Riverside, N.J. **08370**.

The work here noted is a thesaurus, or dictionary of synonyms, associated concepts, and related foreign phrases, similar to the long-famous *Roget's Thesaurus*, but specialized for legal writing and terminology. Included are many terms in ordinary, everyday usage by non-lawyers, as well. A formal review of this work will appear in volume 94, the fall **1981** issue of the *Military Law Review*.

The book is organized in two sections, Main Entries, and Index. In the first section, words are listed in alphabetical order, with their synonyms and other information. The Index lists synonyms, and indicates the main entries under which they are listed. It is believed that the book will be of great value to attorneys who prepare form contracts for merchants, lenders, and others required to use plain English in such documents.

The author, William C. Burton, is an attorney. The work was prepared by Macmillan's Free Press Division.

6. Carlisle, Rodney P., *Sovereignty for Sale: The Origins and Evolution of the Panamanian and Liberian Flags of Convenience*. Annapolis, Maryland: U.S. Naval Institute, **1981**. Pages: xvii, **278**. Price: **\$19.95**. Illustrations, bibliography, index. Publisher's address: Marketing Department, Naval Institute Press, United States Naval Institute, Annapolis, MD **21402**.

The two small countries of Liberia and Panama have two of the world's largest merchant fleets. These fleets include many American-owned or -controlled vessels, registered abroad to avoid the costly safety requirements and other limitations imposed on owners of vessels registered in the United States. These facts are more or less well known to many Americans, in part because of oil

spill disasters of recent years. Mr. Carlisle explains the historical background of foreign registration of domestic shipping, the extent of such registration, the reasons for it, and the actual and potential problems to which it gives rise.

There are two primary reasons why foreign registration of American ships is important. First, the United States can effectively compel only American-registered ships to meet American safety standards and other legal requirements while on the high seas. This could be critical in preventing at least some oil spills, smuggling, and the like. Second, in time of war, a country's merchant fleet is likely to be a vitally important military asset. It is not at all certain that the United States could exert any effective legal control over American-owned vessels of foreign registration.

The book is organized in eleven chapters. A table of contents and an explanatory introduction are provided, and numerous illustrations and statistical tables are scattered throughout the book. The many footnotes are collected together near the end of the book. A bibliography and a subject-matter index are also provided.

The author, Rodney P. Carlisle, is an associate professor of history at Rutgers University, and is a member of a research and consulting firm, History Associates, of Gaithersburg, Maryland. He wrote the book here noted during a term as a visiting scholar at the Department of Energy, Washington, D.C. Educated at Harvard and Berkeley, Dr. Carlisle has three previous books to his credit. He was inspired to write *Sovereignty for Sale* by the loss of a number of oil tankers during the winter of 1976-77.

7. Coletta, Paolo E., *A Bibliography of American Naval History*. Annapolis, Maryland: U.S. Naval Institute, **1981**. Pages: xviii, **453**. Price: **\$15.95**. Paperback. Author and subject indices. Publisher's address: Marketing Department, Naval Institute Press, United States Naval Institute, Annapolis, MD **21402**.

This voluminous work lists **4,882** publications dealing with the history of the United States Navy. Books are the primary materials listed, but also included are articles, unpublished monographs, theses and dissertations, maps, and government documents and reports. Periodicals are not listed, but a note in the introductory pages reviews the leading available periodicals on the Navy and its

history. Titles listed are those published or catalogued as of December 31, 1979.

The work is organized in twenty-three sections. The first section covers general reference works, bibliographies, interviews, works of fiction, chronologies, and other specialized materials. Section 2, "The European Heritage," deals mainly with works on the origins of the American navy and its traditions. Succeeding sections cover in chronological order the various periods of American naval history, war by war and generation by generation, from the Revolution onward. The closing sections list works on the Soviet navy and on policies and predictions for the 1980's.

Explanatory notes are provided, with a table of contents and a list of abbreviations. Library of Congress call numbers are included in each entry, and a note, "Fruitful Browsing," explains the Library of Congress classification of works on naval history. An author index and subject index are provided, together with a table of index abbreviations.

The Naval Institute Press regularly publishes scholarly works on American naval history and biography. A number of these works have been noted in issues of the *Military Law Review* during the past couple of years.

8. Crouch, Richard E., *Interstate Custody Litigation: A Guide to Use and Court Interpretation of the Uniform Child Custody Jurisdiction Act*. Washington, D.C.: The Bureau of National Affairs, Inc., 1981. Pages: xiv, 132. Price: \$9.50 (paperback). Bibliography. Publisher's address: BNA Education Systems, 9401 Decoverly Hall Road, Rockville, MD 20850.

The Uniform Child Custody Jurisdiction Act was drafted by the National Conference of Commissioners on Uniform State Laws in 1968. This uniform law is intended to promote cooperation between courts of different states in child custody suits, and to discourage unending litigation in particular cases through issuance of binding decisions, among other goals. It has been adopted in most states of the United States. As the Act is new law in most jurisdictions, the present handbook provides basic information about the Act for attorneys dealing with custody cases.

The book opens with an introductory section discussing the history of the Act, its purposes, limitations, requirements, and other attributes. Next follows a long section describing judicial interpretations of the Act enunciated by various courts between **1971** and **1981**. Thereafter the full text of the Act with the original official commentary is set forth. A chart of state code citations with notes on state-by-state variations is provided. The main body of the work closes with documents pertaining to related statutory schemes, including federal legislation and two international conventions.

A detailed table of contents and a bibliography of articles on the Act are provided. Citations are inserted in the text rather than in footnotes.

The author, Richard E. Crouch, has been a member of the Virginia bar since **1964**. He is managing editor of the *Family Law Reporter*, a weekly publication of The Bureau of National Affairs first issued in **1974**.

9. Danilov, Dan P., *Immigrating to the U.S.A.* (3d ed.). Vancouver, British Columbia: Self-counsel Press, Inc., **1980**. Pages: **xx, 170**. Price: **\$7.95** (paperback). Sample forms; appendices. Publisher's address: Self-counsel Press, Inc., **1303** N. Northgate Way, Seattle, WA **98133**. In Canada: International Self-counsel Press, Ltd., **306** West 25th St., North Vancouver, B.C., Canada **V7N 2G1**.

This work is subtitled "Who is Allowed? What is Required? How to do it!" These phrases well describe this work on immigration procedures. The book is aimed at people in other countries who want to come to the United States, and at their friends and relatives already in the United States who want to assist them in moving here. It is not a lawbook, but the attorney who occasionally advises immigrants will find it a useful source of information.

The work here noted is a third edition. The second edition, published in **1979**, was noted at some length at **90** Mil. L. Rev. **176-178** (fall **1980**). The second and third editions are generally similar, if not identical. The book is organized in eleven chapters and four appendices. Many government forms are illustrated, and instructions for their completion are provided. The law of immigration is explained in a manner that can be comprehended by any intelligent layperson. Information about and addresses for relevant United States government offices are provided.

The author, Mr. Dan P. Danilov, is an attorney practicing immigration law in Seattle, Washington. He is an editor of a weekly newsletter, *U.S. Immigration News*, and is on the editorial staff of the *Transnational Immigration Law Reporter*, a publication of the International Common Law Exchange Society.

10. Department of State and Joanne Reppert, editor, *Background Notes* (various countries). Washington, D.C.: U.S. Government Printing Office, May–July 1980. Pages: 4 to 8. Price: single copy, \$1.00, domestic; \$1.25, foreign; subscription, **\$16.00** per year, domestic; \$20.00, foreign. Publisher's address: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The State Department *Background Notes* are pamphlets providing information about various countries. The *Notes* here reviewed cover eleven countries, Argentina, the (Brazzaville) Congo, Jamaica, Japan, Kenya, Mauritius, Nigeria, Romania, Switzerland, Taiwan, and Yugoslavia. Each note opens with a brief statistical profile, summarizing the people, geography, government, and economy of the country covered. The pages following contain expanded textual discussions of the profile topics, and also the country's history, government, political conditions, armed forces, foreign relations, and relations with the United States. Information for travelers is also provided, as are lists of the principal government officials and United States officials (ambassador, deputy chief of mission, etc.) in the country. A suggested reading list is included. A map of the country and one or more pictures complete the presentation.

The reader examining the *Notes* is reminded of the Army's area handbooks or country studies, in the Department of the Army Pamphlet 550-series. Four recent country studies are described in the publications notes sections of volumes 88 and 89 of the *Military Law Review*. The country studies are full length books, whereas the *Notes* are the shortest of pamphlets, but the scope of both is the same.

The *Notes* are prepared by the Editorial Division of the Office of Public Communication, within the Bureau of Public Affairs of the Department of State.

11. Economist Newspaper, Ltd., *The World in Figures*. New York, N.Y.: Facts on File, Inc., 1980. Pages: 294. Price: \$27.50. Indexes, statistical tables. Publisher's address: Facts on File, Inc., 119 West 57th Street, New York, N.Y. 10019.

This encyclopedic reference work provides statistical descriptions of some two hundred of the world's nations, together with comprehensive information concerning world economic indicators, trends, and other matters. It is abundantly illustrated with outline maps and charts.

The book here noted is the first American edition of this work, but was preceded by two English editions, published in 1976 and 1978. Those editions, like the present one, were prepared by the staff of the respected English newspaper, *The Economist*. The American edition was published by special arrangement between Facts on File, Inc., and The Economist Newspaper, Ltd.

World in Figures opens with several dozen charts setting forth statistics about the world as a whole. This section is followed by the country entries, sorted out by continent or region, Africa, America (both North and South together), Asia, Europe, and Oceania. The book closes with appendices and indexes.

The first section provides charts setting forth world figures on population, standards of living, education, health facilities, industrial and agricultural production in various categories, transportation, tourism, finance, trade, and other matters. This section is followed by the country entries. The entries vary in length from one-fourth of a page to several pages, but most are about one page in length.

Most country entries open with a short section describing the location, land mass, climate, and other features of the country. This is followed by sections summarizing the political and economic attributes of the society; the people, their numbers, distribution, ethnic characteristics, employment, and standard of living; and the mineral and animal resources and industrial and service-related equipment available. Figures on production, item by item, imports, exports, and other economic factors are next provided. Some of the entries conclude with a section called "Special Focus," describing comprehensive development plans, exports of particular importance, and other matters.

The book concludes with a list of main sources, or a bibliography; a glossary of terms, symbols, abbreviations, and measurement conversion factors; and extensive notes explaining the methods by which the country entries have been prepared.

For the convenience of users, the book offers a short introduction and a detailed table of contents listing the several dozen world statistical charts and the approximately two hundred country entries. The book closes with a country name index and a special focus index.

The Economist was founded in **1843** and specializes in presentation of news and opinion about politics, economics, and international affairs. A weekly newspaper, it is distributed worldwide and has a circulation of over **147,000** per issue.

12. Edelman, Charles **D.**, and Ilene C. Siegler, *Federal Age Discrimination in Employment Law: Slowing Down the Gold Watch*. Charlottesville, Virginia: The Michie Company, **1978**. Pages: xii, **353**. Price: **\$45.00**. Pocket supplement for **1980**, approximately **100** pages. Four statutory appendices, table of cases, index. Publisher's address: The Michie Company/Bobbs-Merrill Law Publishing, P.O. Box **7587**, Charlottesville, VA **22906**.

It is increasingly recognized that the elderly and aging comprise a larger and larger portion of American society, and that their special needs can no longer be neglected as they sometimes have been in past decades. One area of discrimination faced by the elderly is in employment. Discrimination based upon age differs from other forms of discrimination such as racial, religious, and gender based, in that it is more likely to be rationally defensible. Nevertheless, the United States Congress and many state governments have enacted legislation to reduce or remove some of the employment disadvantages faced by older workers. In the federal sector, this is embodied in the Federal Age Discrimination in Employment Act of **1967**, codified at **29 U.S.C. §§621-634 (1976)**.

The book here noted deals with the federal statute cited above, its history, purposes, provisions, requirements, and limitations. There is minor discussion of state law as well. The book is organized in ten chapters. The first six provide background information.

Chapter 7, the heart of the work, focuses on the cited statute in exhaustive detail. The remaining three chapters discuss the effectiveness of the Act, possible future changes in its provisions, and the author's conclusions. Four appendices set forth the texts of applicable statutes, regulations, and other documents, and a description of state law provisions.

The work offers an explanatory preface, a detailed table of contents, a table of cases cited, and a subject-matter index. The text is extensively footnoted. There is some use of charts and tables. A pocket is provided in the back cover for future supplementation.

Charles D. Edelman is an attorney, and a member of the New York and North Carolina bars. Ilene C. Siegler, Ph.D., is a psychologist on the faculty of the Duke University Medical Center, Durham, N.C. The book here noted grew out of a paper written by the two authors for presentation at the Tenth International Congress of Gerontology, which was held in Jerusalem, Israel, in June of 1975.

13. Erlanger, Howard S., and Douglas A. Klegon, *Socialization Effects of Professional School: The Law School Experience and Student Orientations to Public Interest Concerns*. Chicago, Illinois: American Bar Foundation, 1979. Pages: 29. Publisher's address: Foundation Publications, American Bar Foundation, 1155 East 60th Street, Chicago, IL 60637.

The authors of this essay discuss the extent to which the law school experience tends to support or reduce the interest of students in public interest jobs and *pro bono* legal assistance work. The study was conducted at the University of Wisconsin Law School during the mid-1970's, focusing on the class of 1976 during two school years. Questionnaires were distributed, and the results tabulated on charts set forth in the article. The authors observed a slight shift in a conservative direction from one year to the next. They considered this inconclusive as related to the effects of law school on student attitudes. Student awareness of the realities of the job market seemed to be a more significant factor.

This essay was previously published at 13 Law and Society 11 (1978). It has been reprinted by the American Bar Foundation as one in a series entitled "Research Contributions." Howard S. Erlanger is a professor of law at the University of Wisconsin, at

Madison, Wisconsin. Douglas A. Klegon is a sociologist who was pursuing post-doctoral studies at the University of Michigan when this essay was published.

14. Foster, Richard B., James E. Dornan, Jr., and William M. Carpenter, editors, *Strategy and Security in Northeast Asia*. New York, N.Y.: Crane, Russak & Company, Inc., **1979**. Pages: xv, **315**. Price: **\$19.50**. Index. Publisher's address: Crane, Russak & Co., Inc., 3 East 44th Street, New York, N.Y. **10017**.

This work is a collection of essays by many authors discussing the various strategic, political, and economic considerations affecting relations between the United States and the various countries of Northeast Asia, especially China, South Korea, and Japan. The essays are based on papers presented at various international symposia held in **1977**, or on studies prepared by SRI International under contract with the U.S. Army. Several of the essays were reprinted from an SRI journal, *Comparative Strategy*.

The book is organized in five parts. Part **I** is an introduction by Editor Dornan. The second part, "U.S. and Great-Power Strategic Considerations," consists of six essays, as does Part **III**, "Regional Strategic Considerations." Part **IV**, "Regional Political Considerations," offers five chapters, and the fifth part, "Economic Considerations," closes the book with three.

A table of contents, explanatory foreword, and subject-matter index are provided for the convenience of readers. Some of the essays have footnotes.

Richard B. Foster, editor-in-chief for the book here noted, is senior director at the Strategic Studies Center, SRI International. James E. Dornan, Jr., who died in **1979**, was senior political science advisor at the Strategic Studies Center, and also chairman of the Department of Politics at Catholic University, Washington, D.C. William Carpenter is assistant to the director of the Strategic Studies Center. All three are also authors of one or more essays in the volume. The other contributors include several Japanese and Koreans, and are mostly professors at various universities. A few are civil servants or staff members of organizations such as SRI International. Two are retired general officers; one is Japanese, and the other is American, General Richard G. Stilwell.

SRI International resembles the Brookings Institution in its purposes. It is "an independent nonprofit organization providing specialized research services under contract to business, industry, the U.S. government, and some foreign governments." Its aims are stated to be "to enhance economic, political, and social development and to contribute through objective research to the peace and prosperity of mankind." The organization's headquarters is at Menlo Park, California, where it was founded in 1946. The Strategic Studies Center, organized in 1954, is part of SRI International and is based in Washington, D.C.

15. Gallagher, Andrew K., *The Law of Federal Negotiated Contract Formation*. Rockville, Maryland: GCA Publications, Inc., 1981. Pages: 474. Price: \$115.00. Tables of cases; list of abbreviations; index. Publisher's address: GCA Publications, Inc., 255 N. Stone-street Avenue, Rockville, MD 20850.

This treatise deals with one aspect of federal government contract law, the process of solicitation and award (but not performance) of negotiated contracts. Such topics as formal advertising, disputes, changes, and terminations are not considered. Unlike such well-known works as the two-volume *Federal Procurement Law* by Professors Nash and Cibinic of George Washington University, the work here noted does not attempt to cover all of procurement, and it is not a casebook. *The Law of Federal Negotiated Contract Formation* is directed to the attorney or educated layman who has at least some familiarity with federal government procurement law.

The book is organized in twenty chapters, with numbered sections and subsections. The chapters discuss such topics as the authority to negotiate, competitive range, offers, negotiations, selection and award, cancellation of solicitations, sole source procurements, remedies for disappointed offerors, and reformation and rescission. Cases and other authorities are extensively cited in the text, and are listed in case tables near the close of the book. An explanatory preface is provided, as is a list of selected abbreviations and acronyms used in the text and in citations. The work closes with a subject-matter index.

The author, Andrew K. Gallagher, is a government attorney employed in the Office of the General Counsel, U.S. General Accounting Office. Presumably because of his association with that agency,

he has included extensive citations to published and unpublished opinions of the Comptroller General.

16. Guinther, John, *Winning Your Personal Injury Suit*. Garden City, N.Y.: Anchor Press/Doubleday, **1980**. Pages: xviii, **292**. Price: **\$6.95**. Paperback. Two appendices and index. Publisher's address: Doubleday & Co., Inc., **501** Franklin Avenue, Garden City, N.Y. **11530**.

This consumer-oriented work by an investigative reporter explains in layman's language the pitfalls and problems of recovering damages for personal injuries. How to choose a lawyer, how to measure one's damages, when to settle, and many other topics are covered. The author uses an informal style of writing, realistic and hard-hitting, illustrated with many colorful verbal illustrations. Highly informative and at times chilling, the book makes absorbing reading.

The book is organized in seventeen chapters, supplemented by two appendices. Several chapters deal with finding, hiring, and dealing with lawyers, and with how to compute damages for loss of income, medical expenses, pain, suffering, and mental anguish. One chapter focuses on lawsuits from the point of view of the defendant. Other chapters discuss the law in general, negligence, intentional injuries, and strict liability.

The first appendix contains summaries of state law provisions on no-fault insurance, statutes of limitations, sovereign immunity, charitable immunity, and contributory and comparative negligence. The second appendix is an extensive glossary of legal terms. The book offers an introduction by Judge Leon Katz of the Philadelphia Court of Common Pleas, a foreword, a table of contents, and a subject-matter index.

John Guinther, as mentioned above, is an investigative reporter and not a lawyer. He is the author of *The Malpractitioners*, published by Anchor Press in **1978**, and *Moralists and Managers*, published by Anchor Press in **1976**.

17. Heinz, John P., and Edward O. Laumann, *The Legal Profession: Client Interests, Professional Roles, and Social Hierarchies*. Chicago, Illinois: American Bar Foundation, **1979**. Pages: **32**.

Publisher's address: Foundation Publications, American Bar Foundation, 1155 East 60th Street, Chicago, IL 60637.

In this essay, the authors consider the extent to which the structure of the legal profession is affected by the interests of clients, as opposed to the interests of the profession *per se*. Statistical data are assembled to describe the characteristics of lawyers, their clients, and their practice. Most of the article is devoted to an explanation of what the data signify. The authors conclude that the legal profession has very little structure; lawyer autonomy is very great, and little consensus exists within the profession on any important issue. Client interests thus predominate over the interests, if there are any, of the profession as a whole.

This essay was previously published at 76 Mich. L. Rev. 1111 (1978) and has been reprinted by the American Bar Foundation. John P. Heinz is a professor of law at Northwestern University, Chicago, Illinois, and Edward O. Laumann is a professor of sociology at the University of Chicago. Both perform research work for the American Bar Foundation, and this publication is one in a series entitled "Research Contributions."

18. Hough, Terry F., *Soviet Leadership in Transition*. Washington, D.C.: The Brookings Institution, 1980. Pages: xi, 175. Price: \$11.95 (hardcover); \$4.95 (paperback). Table of contents. Publisher's address: The Brookings Institution, 1775 Massachusetts Ave., N.W., Washington, D.C. **20036**.

In this work a political scientist discusses the current generation of Soviet leaders and their likely successors. He points out that the current leaders are elderly men, and that many of them achieved high office as long ago as World War II. A turn-over of much of this leadership during the next decade seems inevitable. What will the future bring? The author contends that the leaders' successors are currently in the ranks of Soviet middle management. Identification of specific individuals is scarcely possible, but Soviet middle management differs considerably in education, life experiences, historical perspective, and other characteristics from the aging top leadership. The author views this development with optimism: The new generation of leaders may be more like American leaders than the older generation, and may be easier to deal with. He urges that the United States deal with the Soviets in a self-confident manner, but

also in a manner that persuades them that they can indeed curtail their military expenditures "without national humiliation".

The book is organized in eight chapters reviewing the changes in the Soviet people and their middle-level and top leaders during the past four generations. Numerous statistical tables and figures are scattered throughout the text, mostly dealing with birth dates of leaders in various fields, together with other relevant personal characteristics.

The author, Terry F. Hough, is a professor of political science and policy science at Duke University, Durham, North Carolina. He has a number of publications on the Soviet Union to his credit. The Brookings Institution describes itself as "an independent organization devoted to nonpartisan research, education, and publication in economics, government, foreign policy, and the social sciences generally." The purposes of the organization are "to aid in the development of sound public policies and to promote public understanding of issues of national importance."

19. Hurst, Walter E., and William Storm Hale, *How to Start a Record or Independent Production Company*. Hollywood, California: Seven Arts Press, Inc., **1980**. Pages: viii, **96**. Price: **\$15.00** (hardcover); **\$10.00** (paperback). Bibliography; table of contents. Publisher's address: Seven Arts Press, Inc., P.O. Box **649**, Hollywood, CA **90028**.

This booklet provides practical information about many aspects of the phonograph record business, primarily from the point of view of the firm which produces records. It is not a law book or a scholarly treatise, but an informational, how-to-do-it manual, extensively illustrated with cartoons. The book could be used by lawyers working in entertainment law, but seems to be addressed primarily to would-be entrepreneurs.

The book is organized in forty-six short chapters, mostly one or two pages in length, and is supplemented by two appendices. Several of the chapters and both appendices consist of sample forms frequently used in the record industry: contracts of various types, financial statements, partnership agreements, and government forms. The textual portions of the book are written in a chatty, conversational style which suggests but does not detail the great com-

plexity of and heavy personal demands made by the record industry.

The author, Walter E. Hurst, is an attorney with an extensive practice in entertainment law in Hollywood, California. He or persons working with him have authored at least twenty books on various aspects of the entertainment industry. Some of these books deal with legal matters, while others concentrate primarily on non-legal business aspects of the entertainment industry. Three of them are lists or directories of published films and phonograph records. Most of the books are similar in format to the book here noted. The cartoon-type illustrations in that book were prepared by Don Rico. The name "William Storm Hale" is apparently a pseudonym under which Mr. Hurst has occasionally published in the past.

20. Independent Commission on Disarmament and Security Issues, *The Salt Process: The Global Stakes*. Vienna, Austria: Independent Commission on Disarmament and Security, 1981. Pages: 10. Publisher's address: Independent Commission on Disarmament and Security Issues, Argentinierstrasse **22**, A-1040 WIEN, Austria.

The strategic arms limitation talks (SALT) between the United States and the Soviet Union have fallen into disrepute in recent years, and it is not clear whether or when these talks will be resumed. Whatever the domestic American reaction to the talks, their discontinuance is viewed by some with alarm. One group that would like to see early resumption of SALT is the Independent Commission on Disarmament and Security Issues, or ICDSI. The stated purpose of this organization is "to identify security and disarmament measures that can contribute to peace in the 1980's and beyond." The Commission is small in numbers but elite and international in membership; its chairman is Olaf Palme, a former Swedish premier, and its American member is former Secretary of State Cyrus Vance.

The short report here noted, published in February, 1981, is the product of one of the Commission's meetings. It reviews the consequences of a failure to resume the talks. Characterizing the talks as "a weathervane of U.S.-Soviet relations, the primary symbol of the quest for U.S.-Soviet cooperation," the Commission concludes that the consequences would be grave indeed, and would include revival of the United States-Soviet arms race, and destabilization of rela-

tions between eastern and western Europe, and between the various East Asian states, with finally an increased likelihood of nuclear war.

The Commission, whose executive secretariat is in Vienna, Austria, was established in September, **1980**, and plans to publish its final report in **1982**, before the next United Nations Special Session on Disarmament. Funding for the Commission's operations are provided "by contributions from individual governments and other institutions."

21. Internal Revenue Service, *Official IRS Tax Audit Guide*. San Diego, California: B.R. Stepp Company, **1980**. Pages: 96. Price: **\$30.00**. Publisher's address: B.R. Stepp Company, **8690** Aero Drive, Suite **221**, San Diego, CA **92123**.

This work is a reproduction of a government publication by a commercial publisher. The book was written for the guidance of Internal Revenue Service agents conducting audits of the income tax returns of individual taxpayers, partnerships, estates and trusts, and corporations. It was classified "confidential" by the Internal Revenue Service, and carried a message to agents that it "must not, under any circumstances, be made available to persons outside of the Service." The Stepp firm obtained the manual under the Freedom of Information Act, **5 U.S.C. 0552 (1976)**, and has since made it available for sale to the taxpaying public.

All the major types of deductions, items of income, business and non-business expenses, and other reportable transactions are covered in the Audit Guide, with explanations of the audit techniques to be used by I.R.S. agents. The Guide is currently unclassified.

22. Jorg, N., *Recht voor Militairen*. Alphen aan den Rijn, The Netherlands: Samson Uitgeverij bv, **1979**. Pages: 305. Price: Dutch florins 44.75 or approximately U.S. **\$18.41**. Paperback. In Flemish language, with short English summary. Bibliography and index. Publisher's address: Samson Uitgeverij bv, Stadhoudersplein **1**, Postbus **4**, **2400** MA Alphen aan den Rijn, The Netherlands.

This work in the Flemish language is a treatise dealing with certain aspects of Dutch military law. Specifically, it raises the question whether there are any limits on the arbitrariness of command-

ers and other state authorities seeking to impose punishment on soldiers for their actions. This question is approached from two perspectives, that of Dutch constitutional law, and that of practical politics.

In constitutional terms, the author asks whether a soldier can properly be punished for an action which had not previously been made punishable by law. This is the problem of the *ex post facto* law, familiar to American constitutional lawyers. Apparently such a law is prohibited in the Dutch civil law system as in the American legal system. But unlike the situation in American military law, this principle applies primarily to civilians and has little or no application to Dutch military personnel.

However, this does not mean that Dutch soldiers are helpless in the face of arbitrary action by their superiors. A number of servicemember labor unions, especially the Vereniging Van Dienstplichtige Militairen (VVDM), actively represent individual soldiers in conflicts with their superiors. Such representation has the effect at least of ensuring that the military hierarchy follows such laws and regulations as are published. This may not prevent all arbitrary action, but it greatly reduces such action.

The book is of interest because of the contrast it provides between American and Dutch views on civil rights for military personnel. This work should be interpreted also with the realization that European human rights law has developed greatly in recent decades, with standards as high as those of American constitutional law, but with a somewhat different focus.

The book is organized in six chapters. It offers a detailed table of contents, an explanatory introduction, a bibliography, and a subject-matter index. All this is in the Flemish language. However, a twelve-page summary in English is presented near the end of the book. The summary has a foreign flavor in some places because of the choice of words and sentence structure, but it is scholarly and careful in its statements and conclusions and, on the whole, is as intelligible as most American legal writing. The author, Mr. N. Jorg, works at the Willem Pompe Institut in Utrecht, The Netherlands.

23. Judge Advocates Association and COL Myron L. Birnbaum, USAF-Ret., editor, *J.A.A. Newsletter*. Washington, D.C.: Judge

Advocates Association, 1980, 1981. Pages: 4 per issue. Price: \$15.00 for one-year membership in J.A.A., including subscription to J.A.A. Newsletter; \$7.50 for junior grade (O-1 through O-3) officers on active duty. Periodical published three times yearly. Publisher's address: Judge Advocate's Association, ATTN: COL Richard H. Love, USAR-Ret., Executive Secretary, 6419 Baltimore Avenue, Riverdale, MD 20840.

The newsletter here noted is published by the Judge Advocates Association, a private organization of attorneys who serve or formerly served in any branch of the United States armed forces. Although the Association was first established in 1943, the first issue of the *Newsletter*, volume 1, number 1, bears the date of June 1980. Two more issues have followed it, October 1980 (vol. 1, no. 2) and March 1981 (vol. 2, no. 1).

The *Newsletter* presents reports on Association activities, including annual membership meetings and directors meetings. Also included is discussion of new or pending federal legislation affecting military law and practice and the Court of Military Appeals. Information about state bar admission requirements and mandatory continuing legal education programs is also provided.

The editor of the *Newsletter* is Colonel Myron L. Birnbaum, USAF, retired, a civilian employee in the Directorate of the Air Force Judiciary, Office of the Judge Advocate General, U.S. Air Force, Washington, D.C. The Association's current president is Colonel Gilbert G. Ackroyd, USA-Ret.; first vice president, Colonel Alexander P. White, USMCR; and immediate past president, Colonel William R. Kenney, USAF-Ret. For many years the executive secretary of the Association has been Colonel Richard H. Love, USAR-Ret., soon to retire from that post. In addition to other national officers and several committees, the Association has state chairmen, and it is understood further that one or more local J.A.A. chapters have been formed in the past. The members of the Association's board of directors include a number of present and former judge advocates general of the various services, as well as other senior officers.

The Judge Advocates Association is a private, non-governmental organization supported only by dues paid by its members. The Association was established in 1943, at first only for Army judge advo-

cates. Membership was subsequently opened to all attorneys who serve or have served in any capacity in any of the armed forces, Army, Navy, Air Force, Marine Corps, or Coast Guard. Service as a judge advocate or law specialist is not required. Dues are **\$15.00** per year, except that officers on active duty in the grade of captain (Army, Air Force, Marine Corps) or lieutenant (senior grade) (Navy, Coast Guard) or lower pay only \$7.50 per year. These rates include a subscription to the *Newsletter* at no additional charge.

The Association's purposes are "to explain to the organized bar the disciplinary needs of the Armed Forces," and "to explain to non-lawyers in the Armed Forces the American tradition which requires for the citizen in uniform, like the citizen out of uniform, the attainable ideal of 'Equal justice under law.'" The Association promotes the sound development of the military legal and judicial system, and tries to help the military services recruit and retain competent legal personnel. From **1948** to **1976**, the Association published a magazine, *The Judge Advocate Journal*. This periodical appeared quarterly at first, and later less regularly. Its contents were similar to those of the *Newsletter*, here noted.

24. Judge Advocates General of the Armed Forces and the U.S. Court of Military Appeals, *Citations and Index to Court-Martial Reports, Covering Volumes 26-50*. Washington, D.C.: U.S. Government Printing Office, **1979**. Pages: viii, **1248**. Tables of cases, index. Publisher's address: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. **20402**.

The long-awaited index volume covering volumes **26** through **50** of the old Lawyers Cooperative *Court-Martial Reports* is now available. Readers will recall that the government's contract with the Lawyers Cooperative Publishing Company was terminated after completion of volume 50 of the *Reports*, covering decisions issued in **1974** and **1975** by the Court of Military Appeals and the service courts of military review. Attorneys working in military justice struggled along for a couple of years with makeshift interim volumes and advance sheets, until the West Publishing Company took up the task with its *Military Justice Reporter*.

The new volume is substantially identical in appearance and format with its predecessor, the *Citators and Index* for volumes **1** through **25**, which was published in **1958**. It opens with a short ex-

planatory preface. This is followed by a table of abbreviations of the titles of various military and naval publications cited in the decisions. This table, together with a table of abbreviations of explanatory phrases which follows it in the next section, comprises an informal manual of citations.

Two tables of cases list all the cases reported by name of accused, and by docket or court-martial number. Next appears the table of court-martial cases cited, which lists each case reported in volumes **26** through **50**, and lists all citations of that case in later military decisions. There follow a table of miscellaneous cases and opinions cited, and a table of orders, laws, and regulations cited.

About half the volume consists of a subject-matter index, listing thousands of topics and subtopics, with the cases which deal with them. This extensive index is the heart of the volume.

Although the new volume does not bear the name of Lawyers Cooperative, it has presumably been published by the government in arrangement with that firm. The new volume replaces the four paperback citators which were issued for each five volumes, i.e., volumes **26** through **30**, **31** through **35**, and so on.

25. Kaplan, Stephen S., *Diplomacy of Power: Soviet Armed Forces as a Political Instrument*. Washington, D.C.: The Brookings Institution, **1981**. Price: **\$29.95** (hardcover); **\$14.95** (paperback). Two appendices; index. Publisher's address: Director of Publications, The Brookings Institution, **1775** Massachusetts Ave., N.W., Washington, D.C. **20036**.

In this work, the author, with the assistance of several other scholars, evaluates **190** incidents in which Soviet armed forces were used as a political tool between **1944** and **1979**. These incidents generally did not involve shooting warfare; nonroutine military maneuvers and similar actions are typical examples. The book presents a multi-faceted analysis of Soviet perceptions, goals, efforts, and achievements. The author concludes that the picture is very complex, and that Soviet success in military diplomacy has been very uneven.

The book is organized in fourteen chapters and three parts. The first part consists of five chapters of historical data on Soviet rela-

tions with the rest of the world during the last three or four decades. This is followed by a group of eight chapters labeled "case studies." These studies, by several authors, focus on specific political uses of Soviet military power, as in the Sino-Soviet border conflict, the Korean and Vietnam wars, Angola, and elsewhere. The author's conclusions are stated in the one-chapter third part.

The 190 incidents considered are listed in Appendix A, and the second appendix is a bibliography. A number of charts and tables are scattered throughout the text, and many footnotes are used. A detailed table of contents and a subject-matter index are provided.

The primary author of this work, Stephen S. Kaplan, is a member of the Brookings Foreign Policy Studies program. He is a co-author, with Barry M. Blechman, of a companion work, *Force Without War: U.S. Armed Forces as a Political Instrument*, published by Brookings in 1978. The several authors who prepared the case studies in the present volume are mainly political science instructors at various colleges and universities; two are journalists. The Brookings Institution describes itself as "an independent organization devoted to nonpartisan research, education, and publication in economics, government, foreign policy, and the social sciences generally." The organization's purposes "are to aid in the development of sound public policies and to promote public understanding of issues of national importance."

The research upon which the book here noted was based was conducted under contract with the Defense Advanced Research Projects Agency, or DARPA, an agency of the Department of Defense.

26. Kaye, Harvey, Paul Plaia, Jr., and Michael A. Hertzberg, *International Trade Practice*. Colorado Springs, Colorado: Shepard's/McGraw-Hill, 1981. Pages: approx. 1,200. Price: \$150.00, plus \$2.00 for postage and handling. Two volumes, in looseleaf binders. Fourteen appendices; tables of authorities cited; index. Publisher's address: Shepard's/McGraw-Hill, P.O. Box 1235, Colorado Springs, CO 80901.

This large publication discusses at length the laws, regulations, treaties, and other documents and authorities pertaining to the importation and exportation of merchandise across the boundaries of the United States. Trade restrictions and requirements, customs

duties, and administrative procedures are discussed at length. The two-volume looseleaf work is directed to attorneys who advise businessmen of all types who are concerned with international trade, especially importation of goods into the United States. The work is a new addition to the Shepard's/McGraw-Hill International Practice Series.

The book is organized in forty-one chapters and six parts, of which the first thirty chapters and four parts are encompassed by volume 1. Part I, "Agencies and Laws in Relief," is followed by the second part, "Unfair Import Practices," and part III, "Countervailing Duty." The fourth part, "Antidumping," completes the first volume. Volume 2 includes part V, "Import Relief in the Absence of Unfair Trade Acts: Sections 201 and 406 of the Trade Act of 1974." The main body of the work is completed by part VI, "The Generalized System of Preferences."

A summary and a detailed table of contents are provided. The text is organized in numbered sections and subsections. Extensive footnotes are provided, and these appear at the bottoms of the pages to which they pertain. Fourteen appendices are set forth in the second volume. These provide some of the legislative history of relevant trade statutes, together with the texts of certain statutes, proposed and actual regulations, international agreements, and sample documents for the guidance of the practitioner.

The three authors are attorneys practicing in Washington, D.C. Harvey Kaye is a partner in the firm of Spencer and Kaye, and is a patent attorney. Paul Plaia is a member of the firm of Plaia, Schaumberg, and Taubman, and was formerly employed in the office of the general counsel of the International Trade Commission. Michael A. Hertzberg is a partner in the firm of Graham and James, and was formerly a partner in Spencer and Kaye. Both Mr. Kaye and Mr. Hertzberg have a number of publications to their credit.

27. Krause, Harry D., *Child Support in America: The Legal Perspective*. Charlottesville, Virginia.: The Michie Company, **1981**. Pages: xv, **700**. Nine appendices; index. Publisher's address: The Michie Company (or Michie/Bobbs-Merrill), P.O. Box **7587**, Charlottesville, VA **22906**.

The law has not dealt very effectively with the problem of ensuring that children receive financial support from absent par-

ents. Most states of the United States have enacted the Uniform Reciprocal Enforcement of Support Act and other relevant legislation. Despite this, enforcement of support obligations has been very spotty because of the many practical difficulties inherent in conducting litigation across state lines. In the late 1970's, the situation improved greatly when the federal government stepped in by means of amendments to the Social Security Act which required the states and the federal government to cooperate in enforcing support obligations.

The book here noted reviews at length the law of child support, legitimacy, and paternity. Scientific evidence occupies a large place in this work, as the technology of blood testing to determine relationship between a child and its putative father (and sometimes mother) has advanced very greatly in complexity and extent in recent decades. An extensive description of the program of federal assistance to state and local authorities is provided. Some space is given to the problem of refusal of mothers to cooperate in locating fathers. Some charts and tables are used.

Nine appendices are provided. Some of these set forth the texts of uniform statutes affecting child support, with information about their status as part of the law of various states. Several essays on blood testing are included; among these are two describing the use of testing in England and Denmark. Addresses of state support agencies are provided.

A detailed table of contents and a subject-matter index are provided. The work is extensively footnoted. It appears to be up to date as of late 1980. The reviewer understands that some more recent legislation on child support should be examined by anyone working in this field.

The author, Harry D. Krause, is a professor of law at the University of Illinois, Urbana, Illinois.

28. Kruzas, Anthony T., and Kay Gill, editors, *Government Research Centers Directory*, Issue No. 1. Detroit, Michigan: Gale Research Co., 1980. Pages: viii, 200. Price for three issues: **\$72.00**. Paperback. Indexes. Publisher's address: Gale Research Company, Book Tower, Detroit, Michigan 48226.

This publication is the first of a series of three issues which together will provide capsule descriptions of approximately 1,500 agencies, facilities, and offices of the federal government which conduct research of one sort or another. Included are research centers which are operated by universities, state or local governments, private contractors, and other non-federal entities, but which are funded or controlled by the federal government. Issue No. 1 presents **454** of the entries.

The Government Research Centers Directory is a companion to the previously published *Research Centers Directory*, which provides information about research centers related to universities and other non-profit institutions. The format of the entries presented in the Government Research Centers Directory is similar to that used in another Gale publication, the *Encyclopedia of Governmental Advisory Organizations*, described in Publications Note No. **24**, in volume **92** of the *Military Law Review*. Each entry opens with the name, address, telephone number, and year of establishment of the research center discussed. The name and title of the head or director of the center is also provided. This is followed by an explanation of where in the federal bureaucracy the center is administratively located. A description of the fields of research or activity of the center comes next, with mention of the center's internal divisions or branches, if relevant. Most entries close with mention of publication of the center's research results, including names of any periodicals or recurring reports issued by the center. Some entries continue with mention of other centers whose work is organizationally related to that of the center described.

Entries are numbered and are arranged in alphabetical order by name of research center. Issue No. **1** includes a name and key-word index, and also an agency index in which listings are grouped by agency, with agencies listed in the same order in which they appear in the *U.S. Government Manual*. The name and key-word index and the agency index pertain only to the **454** entries in Issue No. **1**. The book closes with an appendix, the Government Research Locator, which is a list of names and addresses of all the **1,439** research centers which will be described in the three issues together. This list is organized like the agency index, and has its own index. The short entries in the Government Research Locator are given numbers preceded by the letter "A." These numbers do not correspond to entry numbers in the directory proper, but are keyed to the entries in the locator index.

Some legal research centers are listed, such as the Supreme Court's Federal Judicial Center, and a couple of dozen offices or agencies within the Department of Justice. Most of these, however, are not involved in research of points of law, but of collection and interpretation of statistics concerning the administration of justice, law enforcement, and the like.

29. Leary, Paul M., *The Northern Marianas Covenant and American Territorial Relations*. Berkeley, California: Regents of the University of California, 1980. Pages: vi, **55**. Notes. Publisher's address: Institute of Governmental Studies, 109 Moses Hall, University of California, Berkeley, CA **94720**.

Since the end of World War II, the United States has controlled a group of islands covered by the designation Trust Territory of the Pacific Islands. This United Nations trust territory consists of three island groups, one of which is the Marianas (or Northern Marianas, as the island of Guam, to the south, is also geographically part of the Marianas group). The islands' importance to the United States is military.

In **1975**, representatives of the United States and the Northern Marianas signed an agreement, or covenant, to establish a new American territory, the Commonwealth of the Northern Mariana Islands. This action and the specific contents of the covenant raise various questions under international law and American constitutional law. Mr. Leary reviews the history of American involvement with the Marianas and with other territories and colonies, and offers comments on the new covenant and its significance for American territorial policy in general.

The booklet is organized in eight short unnumbered chapters. A detailed table of contents is provided, and an explanatory foreword. Many footnotes are provided, and are collected together at the end of the book. However, inclusion of a simple map would have been helpful to the reader.

The author, Paul M. Leary, is a professor of political science at the College of the Virgin Islands, St. Thomas, U.S. Virgin Islands, and was a visiting research associate at the Institute of Governmental Studies of the University of California at Berkeley.

The booklet here noted is designated Institute of Governmental Studies Research Report 80-1. The Institute was established in **1919** as the Bureau of Public Administration, and took its present name in **1962**. As mentioned, it is part of the University of California, Berkeley, California. It describes itself as follows: "[T]he Institute conducts extensive and varied research and service programs in such fields as public policy, politics, urban-metropolitan problems, and public administration. The Institute focuses on problems and issues confronting the government and citizens of the San Francisco Bay Area, of California, and of the nation." The Institute maintains a large specialized library, prepares and distributes many publications nationwide, and sponsors lectures, conferences, workshops, and seminars on public policy.

30. Levin, Bruce A., and Robert Coyne, *Tort Reform and Related Proposals: Annotated Bibliographies on Product Liability and Medical Malpractice*. Chicago, Illinois: American Bar Foundation, **1979**. Pages: xiii, **249**. Paperback. Subject and author indices. Publisher's address: Foundation Publications, American Bar Foundation, **1155** East 60th Street, Chicago, IL **60637**.

In recent decades, tort law has come to have greater practical importance to more people than ever before. As lawsuits have proliferated, so have proposals for reform of tort law, and the American Bar Association has promoted study of the tort law system to determine whether changes are needed and, if so, what changes. As one step in this study, the Association, through its publications arm, the American Bar Foundation, has sponsored the compilation of the bibliography here noted. The purposes of the bibliography are to identify the various complaints being made about the system, the proposals for reform, and the groups or individuals putting forth these complaints and proposals.

As indicated by its title, the volume here noted contains two specialized bibliographies, one on products liability and the other on medical malpractice. An American Bar Association report on medical professional liability is set forth in an appendix, and is followed by a list of reports on medical malpractice. The book closes with three indices, an author index, and a separate subject index for each of the two bibliographies.

Bruce A. Levin is a professor of law at the Chicago-Kent College of Law of the Illinois Institute of Technology. Robert Coyne is a member of the Illinois bar. The work was prepared specifically for the A.B.A. Section of Insurance, Negligence and Compensation Law, and the A.B.A. Special Committee to Study the Tort System.

31. Maguire, Daniel C., *A New American Justice: Ending the White Male Monopolies*. Garden City, N.Y.: Doubleday & Company, Inc., 1980. Pages: xiii, 218. Price: \$9.95. Notes; index. Publisher's address: Doubleday & Co., Inc., 501 Franklin Ave., Garden City, New York 11530.

This work by a professional philosopher presents arguments in favor of affirmative action to expand the opportunities available to specified minorities for education, jobs, promotions, better housing, and so forth. The author develops a set of four criteria "for preferential aid to disempowered groups," the function of which is to help identify those groups in American society which, considered as groups, are most deserving of help in a time of increasing shortages of material resources. The groups he identifies are blacks, American Indians, women, Puerto Ricans, and Mexican Americans. The author sets forth various arguments against affirmative action, and criticizes them.

This is not a legal treatise, but a work of social criticism and philosophy. However, the author does discuss the law of equal opportunity and affirmative action from a non-lawyer's point of view. He reviews the Supreme Court's decisions in the *Bakke* and *Weber* cases, and he comments on the Fourteenth Amendment and the various federal civil rights statutes. Legal considerations are apparent in the background throughout this work of philosophy.

The book is organized in three parts and eight chapters. The author states his conclusions in the first chapter, in the hope of stimulating spirited debate concerning ways and means of realizing social justice. He then reviews the history of white male domination of American society, and some of the efforts made and steps taken in recent decades to reduce the extent of this domination. Next follows a lengthy discussion of the philosophical issues and problems in serving the collective good of society at the expense of some individuals. Thereafter the author presents his four criteria for performance, explains how certain groups meet these criteria while

others do not, and responds to various objections commonly raised against preferential treatment.

The book offers a detailed table of contents and a subject-matter index. Footnotes are extensive and are collected at the end of the text.

The author, Daniel C. Maguire, is an instructor in ethics at Marquette University, Milwaukee, Wisconsin. He is the author of two previous books., *Death by Choice* and *The Moral Choice*.

32. McCormick, Richard A., S. J., *How Brave a New World? Dilemmas in Bioethics*. Garden City, N.Y: Doubleday & Company, Inc., 1981. Pages: xiv, 440. Price: \$15.95. Appendix, index. Publisher's address: Doubleday & Co., Inc., 501 Franklin Avenue, Garden City, New York 11530.

This scholarly work by a professional theologian discusses a number of medicolegal problems with which military lawyers may have to deal from time to time. In a chapter entitled "The Preservation of Life," the author discusses the issues involved in termination of life support for patients with little or no hope of recovery. In other chapters, he examines abortion, medical experimentation, contraception, and genetic engineering.

Though a work of careful scholarship, this volume is written in a style which should be intelligible to any educated layman, the term "layman" in this context meaning "non-theologian." A Jesuit priest by training, the author writes from a Roman Catholic perspective. However, most of the topics which he discusses should be of interest to anyone, whatever his or her religion or philosophy, who is concerned with the manner in which science and technology affects all our lives and futures. If Father McCormick's resolution of some issues is not necessarily the same as that found in other schools of thought, his work nevertheless deserves consideration as one set of options available to those faced with the necessity to make choices or decisions in the biomedical area.

The book is organized in seven chapters, each further divided into sections. The opening chapter provides a general introduction to the topic and an explanation of the author's methodology for approaching the issues considered. Chapter VII, "The Quality of Life,"

states some of the author's conclusions, with particular reference to preservation of life in cases such as that of Karen Quinlan. The "living will" approach is discussed. The second through sixth chapters discuss the various specific medicolegal problem areas mentioned above.

For the benefit of readers, the book provides an appendix which explains the "principle of the double effect." This concerns the distinction between things that are directly willed and things that are indirectly willed. It may pose a problem in cases such as those in which a fetus must be destroyed if the mother's life is to be saved. The book is extensively footnoted and concludes with a subject-matter index.

Father Richard A. McCormick, S.J., is Rose F. Kennedy Professor of Christian Ethics at Georgetown University, Washington, DC. He is also a holder of various fellowships and has lectured widely on bioethical topics. He has served as an expert witness in lawsuits such as that involving Karen Ann Quinlan.

33. McGarry, A. Louis, R. Kirkland Schwitzgebel, Paul D. Lipstitt, and David Lelos, *Civil Commitment and Social Policy: An Evaluation of the Massachusetts Mental Health Reform Act of 1970*. Rockville, Maryland: National Institute of Mental Health, 1981. Pages: viii, 146. Paperback. Publisher's address: National Institute of Mental Health, Center for Studies of Crime and Delinquency, 5600 Fishers Lane, Rockville, MD 20857.

The law of civil commitment of the mentally ill has historically favored the party seeking to effect the commitment. It has been a fairly simple matter to force an allegedly mentally disturbed person to enter a mental hospital, there to remain at the discretion of the hospital's doctors. The purposes of the law were benevolent, to ensure that those made helpless or dangerous by mental disease would promptly receive the help they needed, for as long as may be necessary. The loose wording of civil commitment statutes, however, made serious abuses possible. The Massachusetts law which is the subject of the book here noted seeks to prevent such abuse by defining narrowly the term "mentally ill" for commitment purposes, and by providing various procedural safeguards. A number of states have reformed their commitment laws similarly.

The book here noted is a collection of essays reviewing the Massachusetts law, comparing it with previous law, describing how it works in practice, and evaluating the results of its operation. The authors provide considerable statistical data, together with discussion of such topics as problems of prediction of harmful conduct. They conclude that, although some further changes in the law would be desirable, for the most part the new law has been effective in achieving the reforms intended by the legislators. In part this is shown by declines in the numbers of commitments and the length of stays of committed patients, transfer of many patients from heavily secured hospitals to conventional mental hospitals, and so forth.

The book offers an explanatory foreword and a detailed table of contents. Lists of bibliographic references appear at the ends of the chapters. Many charts and tables are provided. There are few footnotes.

This book is the first of a new monograph series, "Crime and Delinquency Reports," sponsored by the National Institute of Mental Health Center for Studies of Crime and Delinquency, which is an agency of the United States Department of Health and Human Services. The research supporting the book here noted was conducted by the Laboratory of Community Psychiatry, Harvard Medical School, under an NIMH grant. The book is officially designated DHHS Publication No. (ADM) **81-1011**. The authors are a medical doctor, two lawyers, and a mental health professional.

34. Michaels, Joseph, *Prime of Your Life: A Practical Guide to Your Mature Years*. New York, New York: Facts On File, Inc., **1981**. Pages: viii, **358**. Price: **\$14.95**. Index. Publisher's address: Facts On File, Inc., **119** West 57th Street, New York, N.Y. **10019**.

Aging, and adjustment to impending retirement, are two things that most Americans expect to face. Increasing lifespans mean that all but the most unhealthy could benefit from planning for the future. The book here noted is intended as a practical manual on how to prepare for retirement and for one's elder years in general. The author contends that, with planning and with use of the information available in this book, one's old age can be the best period of one's life.

The book is organized in five chapters, "Security," "Leisure," "Living," "Getting Things Done," and "Health." A great variety of topics are covered. For example, the chapter on security, which means financial security, discusses pensions, Social Security benefits, investments of various types, life insurance, employment, estate planning, and other matters.

The book offers a subject-matter index. Charts and tables are used throughout the text. A table of contents would have been helpful.

The author, Joseph Michaels, has worked in television broadcasting for many years with the National Broadcasting Company. Among his other professional activities, he is co-host of a weekly show, *The Prime of Your Life*, which deals with matters of interest to older Americans. The book here noted is an outgrowth of his work on this program. Mr. Michaels is the winner of several Emmies and other awards.

35. Monahan, John, *The Clinical Prediction of Violent Behavior*. Rockville, Maryland: National Institute of Mental Health, **1981**. Pages: xi, **134**. Paperback. Bibliography. Publisher's address: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. **20402**.

One major area of difficulty in the law concerns efforts by judges and juries to predict whether a convicted criminal defendant is likely to engage in repeated acts of violence in the future. Such predictions can affect sentencing significantly. The testimony of mental health professionals is sometimes solicited to aid the fact finders in making these predictions. Unfortunately, the tendency of the law is to treat as hard facts the statements of such professionals, when in actuality they are not facts at all. This does not mean that the mental health professionals involved are dishonest, but rather that they approach prediction from a different perspective than do lawyers and judicial fact-finders.

The author of this short paper suggests that research on how to predict dangerous behavior could result in narrowing if not closing the gap between the law and the courts on the one hand, and psychology and psychiatry, on the other. He reviews various efforts made heretofore, defines issues, and describes the clinical predic-

tion process both in theory and practice. The author also discusses the statistical and environmental approaches to improving clinical prediction. He offers a list of questions which the clinician must answer before and during the clinical examination of a person who has been involved in violent behavior.

The book offers a detailed table of contents. A sample case study and clinical report are provided. There are no footnotes, but an extensive list of references closes the book. Charts and tables are used to some extent.

The author, John Monahan, Ph.D., is a psychologist by training, and is a professor of law at the University of Virginia School of Law. The book here noted is an official U.S. Government publication, prepared under a contract between the author and the National Institute of Mental Health. It is designated DHHS Publication No. (ADM) 81-94. The Institute is part of the Alcohol, Drug Abuse, and Mental Health Administration, of the Public Health Service, within the U.S. Department of Health and Human Services.

36. More, Harry W., Jr., *Critical Issues in Law Enforcement* (3d ed.). Cincinnati, Ohio: Anderson Publishing Co., 1981. Pages: xii, 331. Price: \$14.95 (paperback). Bibliographic lists; index. Publisher's address: Anderson Publishing Company, 646 Main Street, Cincinnati, OH 45201. (Note that this firm was formerly called The W. H. Anderson Company.)

This work is a collection of essays about America's police forces, their work, problems, and prospects. It is intended for use as a textbook in college level courses on criminology, law enforcement, or the administration of justice; each chapter concludes with a list of "concepts to consider," which are questions such as might be found on an essay-type examination. However, the essays or articles collected together in the book provide a comprehensive overview of the situation of the police in American society today. The essays, by many authors, are knit together by notes of the primary author of the book.

The book is organized in nine chapters, "Police in a Free Society," "Police Discretion," "Police Corruption," "Stress," and others. Problems in dealing with terrorism and hostage-taking are consid-

ered. Issues such as unionization and strikes, and professionalization and education, are also discussed.

A detailed table of contents, explanatory preface, and subject-matter index are provided. There is some use of footnotes. No formal bibliography is provided, but lists of "selected readings" appear at the ends of the chapters.

The author and editor of this work, Harry W. More, Jr., Ph.D., is chairman of the Department of Administration of Justice at San Jose State University, California.

37. Namdar, Aharon, *Contracts in Bankruptcy*. Tel Aviv, Israel: Bursi et Peretz, **1977**. Pages: **159**. Index. Publisher's address: Bursi et Peretz, **20** Ahad-Haam Street, Tel Aviv, Israel.

This book is based upon a doctoral thesis prepared by the author, an Israeli legal scholar, while he was a graduate law student at Harvard Law School, Cambridge, Mass., during the years **1974** to **1977**. He reviews the historical development and theoretical foundation for the powers of the trustee in bankruptcy under American bankruptcy law to reject or terminate contracts unfavorable to the bankrupt estate. The relationship between the bankruptcy law and the Uniform Commercial Code is discussed, together with special problems presented by contracts for the sale of land.

The work is organized in six chapters, with numbered sections and extensive footnotes. A table of contents and a short subject-matter index are provided.

The author, Aharon Namdar, earned the LL.B and. and LL.M. degrees from Hebrew University, and received the S.J.D. degree from Harvard in **1977**. While at Harvard, he worked under Professor Vern Countryman and others. Mr. Namdar presently teaches commercial law as a member of the Bar Ilan University Faculty of Law in Israel.

38. Nash, Ralph C., Jr., and John Cibinic, Jr., *Federal Procurement Law, Volume II* (3d ed.). Washington, D.C.: The George Washington University, **1980**. Pages: **939** to **2418**. Price: **\$45.00**. Tables of cases, statutes, and regulations; index. Publisher's address: Government Contracts Program, George Washington University,

National Law Center, 2000 H Street, N.W., Room 303D, Washington, D.C. 20052.

This major work is the long-awaited second part of one of the leading treatises on the law pertaining to federal government contracts. Prepared by two of the country's leading teachers and practitioners of government contract law, this volume deals with contract performance and related matters, including changes, terminations, and disputes. The law of federal contracts is constantly changing and developing, but this work manages to present the major developments of recent years.

Volume I, dealing with contract formation, was published in 1977. With thirteen chapters and 938 pages, it partly replaced the second edition which had been published in one volume in 1969. The first edition, also one volume, appeared in 1966. Volume I has been reviewed by Major Gary L. Hopkins, former chief of the Contract Law Division, The Judge Advocate General's School, Charlottesville, Virginia, at 86 Mil. L. Rev. 151 (fall 1979).

Organized in nineteen chapters, the second volume discusses at length such topics as contract interpretation, risk allocation, differing site conditions, delays, measurement of contractor recovery, government claims, costs and accounting, payment and discharge, extraordinary powers, and other topics. A detailed table of contents and an explanatory introduction are provided. Very extensive textual notes are provided, mostly inserted between cases. (The format of the work is that of a law school casebook, although it is used widely by practitioners outside the classroom.) Tables of cited court and board decisions, statutes, executive orders, and regulations are provided. The volume closes with a detailed subject-matter index.

The authors are both professors of law at the George Washington University, Washington, D.C.

39. Newton, William H., 111, *International Estate Planning*. New York, N.Y.: McGraw-Hill Book Company, 1981. Pages: vii, 600 (approx.). Price: \$75.00, plus \$1.50 postage and handling. Looseleaf format, with binder and tabs. Annual supplementation planned. Tables, appendices, index. Publisher's address: Shepard's/McGraw-Hill, P.O. Box 1235, Colorado Springs, CO 80901.

This work may well be useful to the legal assistance attorney advising military clients and their dependents. It describes how United States federal tax law affects Americans who own property abroad, foreign nationals who own property in the United States, and others whose interests span national boundaries. American military personnel who marry foreign nationals often find themselves in need of advice concerning such matters.

The book is organized in eleven chapters, dealing with such matters as jurisdiction, conflict of laws, tax treaties, trusts, partnerships, corporations, and probate. Two appendices provide information about treaties or international agreements concerning taxation to which the United States is a party. Generally, the text covers all the topics that would appear in a work on domestic estate planning, presented in light of their international or foreign implications.

The two appendices are followed by tables of cases and other authorities cited. A summary table of contents and a detailed table of contents are made available, together with a subject-matter index. The book comes in a special five-ring binder, with pages measuring 6 $\frac{5}{8}$ " \times 9 $\frac{1}{4}$ ". Annual supplements are planned, to update and expand the text. Five tabs are provided, identifying the text, supplement, appendices, tables, and index. The text is organized in numbered sections, and is heavily footnoted.

The author, William H. Newton, III, is a member of the Texas, Mississippi, and Florida bars, and is associated with law firms in Dallas and Miami. He received his law degree from Southern Methodist University in 1972, and was formerly a trial attorney with one of the regional counsels' offices of the Internal Revenue Service. Mr. Newton has published a number of legal articles.

International Estate Planning is the latest title in the Shepard's/McGraw-Hill Tax and Estate Planning Series.

40. Norman, Albert, *The Brittle Middle East: A Political and Internationally Legal Evaluation of Iran and the United States of America, 1979-1980*. Northfield, Vermont: Albert Norman, 1981. Pages: 189. Price: \$8.80. Paperback. Index. Publisher's address: Professor Albert Norman, 3 Alpine Drive, Northfield, VT 05663.

This collection of essays presents the author's views on recent American-Iranian relations, in particular the Iranian seizure of

American personnel at the U.S. Embassy in Teheran as hostages, and the decision of the International Court of Justice disapproving the seizure. The author discusses such concepts as the world rule of law, anarchy, nihilism, and the need for an international police authority, in relation to the Iranian crisis.

The book is organized in seventeen chapters. The style of the writing is more that of a lecturer than an essayist. This book is not a treatise on international law. Rather, it emphasizes the historical, political, and philosophical implications of the actions of the United States and Iran and of the decision of the International Court.

The author, Albert Norman, has recently retired from the post of professor of history and international relations at Norwich University, in Vermont. He is also a retired Army major.

The first five essays, or chapters, in the work here noted were published in the Northfield News and Advertiser, Northfield, Vermont, in 1979 and 1980. A previous group of essays by Mr. Norman, collected together under the title *The Panama Canal Treaties of 1977: A Political Evaluation*, was noted at 82 Mil. L. Rev. 219 (fall 1978).

41. Oxbridge Communications, Inc., *Legal and Law Enforcement Periodicals*. New York, New York: Facts on File Publications, 1981. Pages: x, 238. Price: \$35.00 (paperback). Index. Publisher's address: Facts on File Publications, 119 West 57th Street, New York, New York 10019.

This work is a directory of academic law reviews, bar journals, police and law enforcement periodicals, and related publications produced by universities, government agencies at all levels, and private organizations. With some 3,800 separate entries, organized under fifty subject-matter headings, the book offers what appears to be fairly complete coverage of the field. Both American and Canadian periodicals are included.

Examination of a few of the dozens of subject-matter categories—accounting, administrative law, alcohol regulations, bankruptcy law, consumer protection regulations, educational law, immigration law, judiciary and the courts, occupational safety, and many others—provides an idea of the range of topics which can be

encompassed within the label, "legal and law enforcement periodicals." Under the heading "Military Law" are no less than fourteen periodicals, including the *Advocate*, the *Air Force Law Review*, the *Army Lawyer*, the Navy's *JAG Journal*, and the *Military Law Review*. On the law enforcement side are the Army's *Military Police Law Enforcement Journal*, and the Air Force's *Security Police Digest*. Private-sector publications include such diverse items as the *Military Law Reporter*, *Shepard's Military Justice Citations*, the *Uniformed Service Journal*, and the V.F.W. *Washington Action Reporter*.

Each entry includes the title of the periodical, the name and address of its publisher, the names of one or more editors, a description of the purposes and contents of the periodical, and various statistics such as price, circulation, page size, and so forth.

Facts on File Publications is noted for its directories and encyclopedic reference works in a number of specialized fields. Several of these publications have been noted in previous issues of the *Military Law Review*. Oxbridge Communications, Inc., maintains an extensive data base of periodicals information, and compiled the work here noted for Facts on File.

42. Polmar, Norman, *The Ships and Aircraft of the U.S. Fleet* (12th ed.). Annapolis, Maryland: Naval Institute Press, **1981**. Pages: **421**. Price: **\$24.95**. Three appendices, two indices, addenda pages. Publisher's address: Marketing Department, Naval Institute Press, U.S.-Naval Institute, Annapolis, MD **21402**.

This encyclopedic work is the latest of a long series of editions, the first of which was published in **1939**. Extensively illustrated, it describes all the vessels currently available to the United States Navy. Exhaustively detailed statistical information is provided.

The book is organized in twenty-six chapters and three appendices. The opening chapters are short essays on the state of the fleet, fleet organization, and personnel of the Navy. The many problems faced by the Navy are discussed, and the prospects for future improvement are evaluated. A glossary of naval terms precedes sixteen chapters setting forth the specifications of all the many types of vessels—submarines, aircraft carriers, destroyers, landing craft, patrol ships, auxiliary ships, floating dry docks, and others.

Chapter 21 is an essay on naval and marine corps aviation and its organization. Numerous types of naval aircraft are described. Chapters on naval weaponry and electronic systems, including radar and sonar, follow. The text closes with chapters on the Coast Guard and the much smaller National Oceanic and Atmospheric Administration, their organization, missions, personnel, and equipment.

The three appendices explain the system of ship classification, provide information about American shipyards, and set forth a list of all the ships deleted from the rolls of the Navy. An index of ship names is provided, followed by an index of letter designations. The book closes with updating addenda. The work is extensively illustrated with photographs and diagrams, and many charts and tables are provided.

The author, Norman Polmar, is a defense consultant specializing in naval matters, with many years of experience in research, writing, and related work for agencies of the U.S. Navy. He has published many books and articles on naval matters, and was formerly editor of the United States sections of the annual *Jane's Fighting Ships*.

43. Redish, Martin H., *Federal Jurisdictions: Tensions in the Allocation of Judicial Power*. Indianapolis, Indiana: Michie/Bobbs-Merrill, 1980. Pages: xiii, 361. Price: \$25.00. Index, table of cases. Publisher's address: The Michie Company, Bobbs-Merrill Law Publishing, P.O. Box 7587, Charlottesville, VA 22906.

This elaborate work provides an extensive review of the law, history, and philosophy behind the distribution of power to, and exercise of that power by, the United States Supreme Court and the other federal courts. Emphasis is placed upon contrast and comparison between federal and state courts, and also between federal courts created by Congress under Article III of the Constitution, and federal courts created under other grants of authority. Questions of jurisdiction, sovereign immunity, and the power to enjoin are also discussed.

The book is organized in eleven chapters. A short introduction provides an overview of the book and its contents. This is followed by chapter 1, "Congressional Power to Control Federal Court Jurisdiction." This chapter discusses Article III of the Constitution, and

the power of Congress to create courts thereunder and to assign to and withhold from them jurisdiction over various types of cases and other matters. Next comes the second chapter, dealing with so-called "legislative courts," courts created by Congress in exercise of its authority under provisions of the Constitution other than Article III. If the Court of Military Appeals is an Article III court, it is nevertheless true that the service courts of military review and the various courts-martial are all Article I "legislative courts."

The third chapter discusses the law of federal question jurisdiction, the scope of power in the lower federal courts to interpret and apply federal law. Chapter 4 considers the power of the federal courts to fashion federal common law, i.e., to fill gaps in statutory and other pre-existing law through reasoning by analogy and extension and otherwise. Several specific areas of law, such as foreign relations and maritime law, are discussed.

Chapter 5 focuses on state courts. Specifically, it examines the power of state courts to hear federal causes of action, their power to control actions of federal officers, and their obligation, in some cases, to adjudicate federal causes of action. The sixth chapter discusses the sovereign immunity of the various state governments from suit, and the implications of the eleventh amendment to the Constitution, which denies to the federal courts jurisdiction over various suits against states. Chapter 7 considers the history and current status of the famous 1938 decision of the Supreme Court in *Erie Railroad v. Tompkins*, which in effect required federal courts to apply state law in a number of cases in which federal law had previously been applied.

The eighth chapter considers procedural limitations on Supreme Court review of state court decisions. Chapter 9 deals with cases in which federal courts abstain from deciding cases, usually involving uncertain or ambiguous issues of state law. The tenth chapter considers the Anti-Injunction Statute, which generally prohibits federal courts from issuing orders to stay proceedings in state courts. This is codified at 28 U.S.C. § 2283 (1976), as amended. The eleventh chapter discusses a related matter, the view of the Supreme Court that lower federal courts should abstain from interfering in ongoing criminal prosecutions in state courts. The book concludes with a chapter on removal of civil rights cases from state courts to federal courts under the statute at 28 U.S.C. § 1443 (1976).

For the convenience of users, the book offers a summary table of contents, a detailed table of contents, a table of cases cited, and a short subject-matter index. The text is very extensively footnoted, and the notes appear at the bottoms of the pages to which they pertain.

The author, Martin H. Redish, is a professor at Northwestern University School of Law, Chicago, Illinois. A **1970** graduate of Harvard Law School, Professor Redish has been a law teacher since **1973**, and practiced law in New York City from **1971** to **1973**. He has published many articles on civil procedure, jurisdiction, and related topics in numerous law reviews and journals.

Dean Scott Bice of the University of Southern California Law Center was co-author of chapter **1**, "Congressional Power to Control Federal Court Jurisdiction."

44. Rhode, Grant F., and Reid E. Whitlock, *Treaties of the People's Republic of China, 1949-1978: An Annotated Compilation*. Boulder, Colorado: Frederick A. Praeger, **1980**. Pages: ix, **207**. Price: **\$24.50**. Publisher's address: Westview Press, Inc., **550** Central Avenue, Boulder, Colorado **80301**.

The past ten years have seen much American interest in China, its history, people, social organization, and so forth. One product of this outburst of interest has been the publication of many books and articles. The volume here noted is a sourcebook for scholars interested in the foreign relations of modern China. Collected here are the translated texts of the thirty-four treaties which have been concluded by the People's Republic of China with various nations, mostly Soviet bloc and Third World states, between **1949** and **1978**.

It should be noted that the translators are giving the term "treaty" a meaning similar to the restrictive definition employed in United States diplomatic practice. A treaty, in this sense, is only one of several types of international agreements, and is not the most commonly used type. The Chinese documents which the translators are labeling treaties are primarily the most formal international agreements, concluded at the highest levels of government, dealing with the most important subjects, and having the longest anticipated duration of any agreements. As is true also of American practice, the Chinese have concluded many agreements at lower

levels. These apparently number at least two thousand, and apparently correspond to American executive agreements and other types of agreements that do not require formal ratification by vote of the Senate.

Most of the treaties reproduced are friendship treaties, relatively short documents stating lofty principles in very general terms. It would be easy for an American to underestimate the importance of these documents, which seem to deal with nothing specific or concrete. In Chinese diplomatic practice, such treaties have often been considered an essential early step in relations, preceding the conclusion of substantive treaties settling boundary disputes, establishing rights and duties pertaining to trade and navigation, and the like.

The remaining treaties, and a few agreements below the level of treaties, deal with boundaries, commerce, navigation, exchange of consuls, and in one case, dual nationality. Of special interest to Americans will be the Shanghai Communique, issued in **1972**, and the Joint Communique of **1979**, both dealing with U.S.-China relations. Documents pertaining to Sino-Japanese relations are also presented.

The book offers a table of contents, various charts providing information about the several groups of treaties, and extensive textual footnotes. Each group of treaties is introduced with a brief note explaining China's interest in the subject of the treaties.

Grant F. Rhode and Reid E. Whitlock are both visiting lectures at Tufts University, Medford, Massachusetts. Their work on this volume was stimulated by seminars on China conducted at the Fletcher School of Law and Diplomacy, Tufts University, and at the Harvard Law School.

45. Rubenstein, I.H., *Law on Cults*. Chicago, Illinois: The Ordain Press, **1981**. Pages: iv, **120**. Price: **\$4.95**. Paperback. Publisher's address: The Ordain Press, P.O. **Box 90**, Chicago, IL **60690**.

The work here noted reviews the case law and statutes, both federal and state, affecting fortune-telling, faith healing, and pacifism. The author makes clear in his preface that he considers these three phenomena as major social evils, and the sources of problems "of grave public concern." All three, he asserts, are largely the prod-

ucts of religious zealotry and fanaticism, and must be restricted by law.

This book is a reprint of a work first published in **1948**. The present edition shows few signs of having been updated; most of the cited cases, for example, bear dates in the **1940's** and earlier. This is a misfortune, as there have been developments in all these areas over the past thirty years which cast doubt on the present-day correctness of many of the author's assertions. For example, though such was certainly the law at one time, it is impossible to believe that today a state could without challenge deny bar admission to an otherwise qualified applicant merely because he is a conscientious objector (pp. **112-13**).

The book offers an explanatory preface and a detailed table of contents. The text is organized in numbered and lettered sections and subsections. The work is heavily footnoted, and notes appear at the bottoms of the pages to which they pertain.

I.H. Rubenstein, the author, was born in **1908**. After graduation from DePaul Law School, he was admitted to the Illinois bar and practiced law in Chicago, Illinois. During World War II, he saw service as a combat infantryman with the 30th Division in Europe. In **1947**, he served as director of the legal department of the Military Government of Okinawa, and served as a judge on the Superior Provost Court there.

46. Saltzburg, Stephen A., Lee D. Schinasi, and David A. Schlueter, *Military Rules of Evidence Manual*. Charlottesville, Va.: The Michie Company, **1981**, Pages: xvii, **488**. Price: **\$35.00**. Index, table of cases, pocket for annual supplement. Publisher's address: Michie/Bobbs-Merrill Law Publishers, P.O. Box **7587**, Charlottesville, VA **22906**.

The Military Rules of Evidence were promulgated as an amendment to the Manual for Courts-Martial in Executive Order No. **12,198**, dated March **12, 1980**, amended in minor respects on September **1, 1980**. Prepared by a Department of Defense-level committee, the new Rules are largely based upon the Federal Rules of Evidence, enacted in **1975**, except for section III concerning exclusion of evidence, and section V concerning evidentiary privileges.

The Military Rules are of great importance to all attorneys who practice before courts-martial.

The organization of the book follows the organization of the Military Rules themselves. The format of the work is similar to that of the *Federal Rules of Evidence Manual*, prepared in two editions and a 1980 supplement by Professor Saltzburg in two editions and a 1980 supplement by Professor Kenneth R. Redden of the University of Virginia School of Law. That manual was reviewed by Lieutenant Colonel Herbert J. Green at 89 Mil. L. Rev. 96 (summer 1980), and briefly noted at 89 Mil. L. Rev. 130. The *Military Rules of Evidence Manual* is the subject of a formal book review published in volume 94, the fall 1981 issue of the *Military Law Review*.

The book opens with an introduction explaining the purposes and use of the work, with background information on the Military Rules, their sources, peculiarities, and practical effects. In the main body of the book, the text of each separate numbered rule is set forth, followed by the authors' editorial comments on the rule, and then by the official drafters' analysis. The editors' comments are generally as extensive as the drafters' analysis, or more so. The tone of the analysis is impersonal and concentrates on description of the sources for each rule in prior law. The editors' comments cover the range of fact situations contemplated for each rule, discuss unresolved issues and ambiguities, and offer suggestions to counsel working under the rules.

The eleven chapters of the book correspond to the eleven numbered sections of the military rules. The text of the rules is presented in large type, the editors' comments in medium-sized type, and the drafters' analysis in type slightly smaller than that of the comments. Rules, comments, and analysis are clearly separated from each other by bold face headings. Federal and military cases, the Manual for Courts-Martial, and other authorities are extensively cited in the text of both comments and analysis. There are no footnotes.

A detailed table of contents and a foreword are provided, in addition to the explanatory introduction mentioned above. The book closes with an extensive table of cases cited, and a subject-matter index.

Stephen A. Saltzburg has been a professor of law at the University of Virginia School of Law since 1977. Located in Charlottesville, Virginia, the School of Law is adjacent to the Judge Advocate General's School. Born in 1945, Professor Saltzburg received his undergraduate education at Dickinson College, and graduated from the University of Pennsylvania School of Law in 1970. In addition to the *Federal Rules of Evidence Manual* already mentioned, Professor Saltzburg is the author of several articles on the law of evidence and related topics.

Major Lee D. Schinasi is an instructor in the Criminal Law Division of The Judge Advocate General's School, Charlottesville, Va., and Mr. Schlueter, who left the Army in 1981, is a member of the professional staff at the United States Supreme Court. Mr. Schlueter is the author of *The Enlistment Contract: A Uniform Approach*, published at 77 Mil. L. Rev. 1 (summer 1977), and *The Court-Martial: An Historical Survey*, 87 Mil. L. Rev. 129 (winter 1980), as well as two book reviews at 78 Mil. L. Rev. 206 (fall 1977) and 84 Mil. L. Rev. 117 (spring 1979). He has published several articles on criminal law subjects in *The Army Lawyer*, the monthly companion to the *Military Law Review*. Major Schinasi is the author of *Military Rules of Evidence: An Advocate's Tool*, published at page 3 of the May 1980 issue of *The Army Lawyer*; and co-author, with Lieutenant Colonel Herbert J. Green, of *Impeachment by Prior Conviction: Military Rule of Evidence 609*, *The Army Lawyer* at 1, January 1981.

47. Sarkesian, Sam C., editor, *Combat Effectiveness: Cohesion, Stress, and the Volunteer Army*. Beverly Hills, California: Sage Publications, Inc., 1980. Price: \$20.00 (hardcover); \$9.95 (paperback). Pages: 305. Bibliography, index. Publisher's address: Sage Publications, Inc., 275 South Beverly Drive, Beverly Hills, CA 90212.

This collection of eight essays examines the current debate on the volunteer Army and discusses ways and means of measuring its combat effectiveness. Acknowledging that the only completely certain measure of effectiveness is a unit's performance in actual combat, the authors discuss a variety of subjective and objective methods and criteria which might be used short of that ultimate test. The general conclusion or thrust of the book is that merely quantitative measures, which have been heavily relied upon in the past,

do not provide an adequate indication of combat effectiveness. The matter is seen to be one of great complexity, requiring that an effort be made to consider a number of subjective factors which, if difficult to measure or even define, are nonetheless vitally important elements in a unit's ability to fight and win.

The essays are grouped in three parts. The first group, "The Dimensions of Combat Effectiveness," concentrates on defining the problem and reviewing measurement techniques used heretofore. The Vietnam experience is discussed. In the second part, "Society and the Profession," problems of ideology and civilian perception of military careerists are discussed. The scope of the concluding section, "Leaders and Soldiers," is suggested by the titles therein, "The Will to Fight," "Military Staying Power," and "The Potential for Military Disintegration."

The essayists are primarily from the academic community, and some have backgrounds in military service to varying extents. The editor, Sam C. Sarkesian, is a professor and chairman of the Department of Political Science at Loyola University of Chicago. He is a retired Army officer and has written a number of books and articles concerning the military as part of American society.

The book here noted is volume 9 in a series called the Sage Research Progress Series on War, Revolution, and Peacekeeping. Previous numbers in this series have dealt with topics such as the role of the reserves; military unions; the current Japanese military system; military government in Latin American countries; and related topics. Sage is a social science publisher and has a branch in London as well as California.

48. Schwartz, Max, and Neil Forrest Schwartz, *Engineering Evidence*. New York, N.Y.: McGraw-Hill Book Company, 1981. Pages: xxiii, **497**. Price: \$60.00 plus **\$2.00** for postage and handling. Five appendices, tables of authorities cited, index. Publisher's address: Shepard's/McGraw-Hill, P.O. Box **1235**, Colorado Springs, CO 80901.

Contract litigation continues to be an important area of the law, involving ever more complex technical issues and ever larger sums of money. Government contracts tend to be fruitful sources of litigation, and are the subjects of cases processed by the Armed Services

Board of Contract Appeals, the various other administrative boards of contract appeals, the United States Court of Claims, and occasionally other boards and courts. The government contract attorney may often find himself or herself bewildered by the mountains of specialized technical evidence that accumulate in so many government contract cases. While there is no substitute for patiently mastering the facts of each particular case, a treatise on technical evidence in general may often help in organizing one's effort.

The work here noted was prepared by a father-son, engineer-lawyer team. Presented are information about the various types of engineering, technical terminology and symbols, discovery techniques for the trial attorney, and descriptions of the use of expert testimony and other types of evidence at trial. Four major types of cases are discussed, products liability, construction, catastrophes and natural disasters, and transportation accidents.

The book is organized in ten chapters, whose text is divided into numbered sections. A highly detailed table of contents is provided. Five appendices set forth information about government regulations, a list of sources of expert witnesses, and a glossary of engineering terms and symbols. The volume closes with tables of cases and statutes cited and a subject-matter index. The text is moderately footnoted and includes many diagrams, formulae, and checklists. A pocket is included in the back cover for updating supplementation.

Max Schwartz is a civil and mechanical engineer, and Neil Forrest Schwartz is a member of the California bar. The volume here noted is one number in the McGraw-Hill trial practice series.

49. Shufeldt, Henry H., Captain, and Kenneth E. Newcomer, *The Calculator Afloat: A Mariner's Guide to the Electronic Calculator*. Annapolis, Md.: Naval Institute Press, **1980**. Pages: x, **225**. Price: **\$16.95**. Bibliography, index. Publisher's address: Marketing Department, Naval Institute Press, U.S. Naval Institute, Annapolis, MD **21402**.

This highly technical manual is intended for use by the navigator and other professional mariners with a good working knowledge of trigonometry and algebra. The book explains how to use a scientific

calculator, of pocket size or larger, to solve a great variety of common navigational problems and other problems with mathematical solutions which are commonly faced by sailors. Problem-solving techniques are abundantly illustrated by means of formulae, diagrams, charts, and tables on virtually every page.

The work here noted is based on a book called *Slide Rule for the Mariner*, published in 1972. The authors explain that the electronic calculator, faster and more accurate than a slide rule, had tended to replace that tool. The same formulae apply to both slide rule and calculator, but have in part been restated for use with calculators, sometimes with keying instructions. The authors observe that calculators vary too much for extensive keying information to be useful. Accordingly, the user of the manual must make his or her own translation of the book's instructions into a form useable with a particular calculator.

The book is organized in six chapters, dealing with inshore and offshore navigation, a great variety of celestial observations and computations, and various other computations not directly affecting navigation. A detailed table of contents, explanatory foreword, bibliography, and subject-matter index are provided, in addition to many tables and charts scattered throughout the text. Footnotes are not used; citations are presented in the text.

Captain Henry H. Shufeldt is a retired naval officer and is presently a consultant to the firm of Weems and Plath, Inc., engaged in designing and developing navigational instruments. He has published a number of writings, chiefly on celestial navigation. Mr. Kenneth Newcomer, an electrical engineer by training, has been employed by the Hewlett-Packard Company, makers of computers since 1973. He has written many navigation programs for advanced computers. He was formerly employed as a radio engineer at the Jet Propulsion Laboratory of California Institute of Technology.

50. Trullinger, James Walker, Jr., *Village at War: An Account of Revolution in Vietnam*. New York City, N.Y.: Longman, Inc., 1980. Pages: xviii, 235. Price: \$17.50. Bibliography, index. Publisher's address: Longman, Inc., ATTN: College Division, 19 W. 44th Street, New York, N.Y. 10036.

This book is a study of one Vietnamese village and how its social structure, economy, and political life were affected by several decades of intermittent conflict between revolutionary elements and the French, Americans, and Vietnamese government officials. The author's purpose is not so much to discuss village life in general, as to focus on the details of life in one particular village, as a means of showing in a particularly vivid manner the massive impact which the long conflict had on the people. The village chosen is called My Thuy Phung, and is in the vicinity of the old royal capital of Hue, in central Vietnam. Many other villages might have served equally well; this one was typical.

The author's main point is that the presence of foreigners—the French, the Japanese for a short time, and the Americans—and their efforts at modernization of Vietnamese society, led to destruction of traditional values and the social fabric in the village. This contributed to the development of the revolutionary movement and in the long run made its success inevitable. Westerners working in Vietnam generally failed to understand or sympathize with the needs and aims of the Vietnamese people, preferring instead to inundate them with material resources, projects, and heavy-handed advice.

The author of the book was opposed to American intervention in Vietnam. A foreword was written by former Senator Eugene J. McCarthy. The author was a refugee relief worker in Danang from 1969 to 1972, and returned to Vietnam for a few months in 1974 and 1975 to study the village which is the subject of this book.

The work is organized in thirteen chapters, providing background information about the village and early European colonial ventures in the area, with the development of Viet Minh influence. Various phases of the revolutionary struggle and its effects on the village are recounted in chronological order from the villagers' point of view. Interviews, descriptions of family activities and problems, and comments of American and Vietnamese officials are provided. Maps and pictures are provided. Footnotes are collected at the ends of the chapters. There is some use of charts and statistics. A table of contents, bibliography, and subject-matter index complete the work.

51. Van Slyck, Philip, *Strategies for the 1980s: Lessons of Cuba, Vietnam, and Afghanistan*. Westport, Connecticut: Greenwood Press, 1981. Pages: xvi, 108. Price: \$19.95. Foreword by Senator Daniel P. Moynihan. Bibliography, index. Publisher's address: Greenwood Press, 88 Post Road West, P.O. Box 5007, Westport, CT 06881.

It seems to be generally accepted that the American defense establishment has deteriorated significantly during the past decade or so. Mr. Van Slyck discusses the causes for this deterioration, and pinpoints the Soviet invasion of Afghanistan as the event which has finally stimulated general public awareness of the problem and a popular demand for its solution. While restoration of our military prowess is an important part of the solution, the author feels that development of a suitable, broadly supported foreign policy is at least equally important. He argues for resumption of the draft, with alternative service options. Concerning foreign policy, Mr. Van Slyck is less specific, saying that Americans must regain confidence and trust in themselves before they can expect to regain the confidence and trust of the world.

The book offers a detailed table of contents and a foreword by Senator Daniel P. Moynihan. The text is organized in six chapters, with further division into titled sections. Footnotes are collected at the ends of the chapters. A bibliography and subject-matter index conclude the work.

The author, Philip Van Slyck, is a public affairs writer, editor, and consultant in the area of United States foreign policy. He is chairman of the executive committee of the board of trustees of Freedom House, described further below. Mr. Van Slyck has also published a work entitled "Peace: The Control of National Power." The book here noted is sponsored by Freedom House, and bears the series designation, "Studies in Freedom, No. 1.

Freedom House, organized in 1941, describes itself as "a national nongovernmental organization . . . that seeks to strengthen free institutions in the United States and abroad." One of its major activities is the conduct of the year-round Comparative Survey of Freedom, "assessing the level of political rights and civil liberties in every country and territory." Freedom House publishes a bimonthly current affairs magazine and a yearbook. The organization publishes writings of political dissenters living under oppressive re-

gimes where free expression is curtailed. Research is conducted on questions of public policy, and advisories are issued setting forth the results.

52. Wasserman, Paul, and Gita Siegman, editors, *Consumer Sourcebook* (3d ed.). Detroit, Michigan: Gale Research Company, **1980**. In two volumes. Pages: Vol. **1**, xiii, **783**; vol. **2**, vi, **784-1481**. Price: **\$78.00**. Indexes. Publisher's address: Gale Research Company, Book Tower, Detroit, MI **48226**.

This monumental work should be an invaluable research tool for activist consumers and consumer-rights organizations. It provides descriptions of hundreds of organizations, governmental agencies, and books and periodicals which provide consumer information of every conceivable sort. In addition, the greater part of the work is a list of addresses for firms or companies which make or distribute consumer goods and services.

The publication here noted is a third edition, greatly expanded over previous editions to reflect the establishment of many new consumer organizations and agencies in recent years, the outgrowth of the consumer rights movement. The two volumes are quite large, with pages measuring **8** inches by **11** inches. A simple, easy-to-read typeface is used, and page and entry layout contribute further to the readability of the text.

The *Sourcebook* is organized in six sections. The first five sections are presented complete in volume **1**. The long sixth section, company addresses, starts in the first volume and fills the second. Section **I** describes and provides addresses for several hundred federal, state, county, and city governmental organizations which provide information to or otherwise aid consumers. The second section provides similar information about many types of non-governmental consumer organizations, organized according to subject-matter area of interest, such as energy, health, law, safety, and so forth.

Radio and television network programs and syndicated newspaper columns are described in Section Three, "Media Services." Included also are consumer assistance programs and departments maintained by networks, stations, and newspapers. The fourth section is a bibliography which lists hundreds of publications, including

periodicals and audiovisual materials, which provide advice to or are oriented toward the consumer.

The fifth section consists of indexes listing the publications and organizations which are described in the earlier sections. Section Six, the heart of the *Sourcebook*, is a lengthy directory of approximately 17,000 firms, large and small, which provide a great variety of consumer goods and services. Product brand names are provided as well.

The editors are members of the staff of the Gale Research Company, publisher of the work here noted. The Gale firm has produced a number of specialized directories, among them the *Government Research Centers Directory* noted elsewhere in this publication notes section.

53. West Publishing Company, *West's Military Justice Digest*. St. Paul, Minnesota: West Publishing Co., 1980. Pages: 454 (Issue No. 1). Paperback. Table of cases. Publisher's address: West Publishing Company, 50 West Kellogg Boulevard, P.O. Box 3526, St. Paul, MN 55165.

Since 1978, West Publishing Company has published *West's Military Justice Reporter*, successor to the *Court-Martial Reports*, which was published by the Lawyers Co-operative Publishing Company through volume 50 (1974-1975). The *Reporter* has been published through volume 9 in hardcover, and is available in advance sheet form through part of volume 11. West's new *Digest* is an inevitable development, corresponding to the *Citators and Index* accompanying the *Court-Martial Reports*.

The first issue of the *Digest*, No. 1, bears the date of July 1980 and covers cases reported in the first eight volumes of the *Reporter*. The book opens with a table of the cases digested, which is followed by a descriptive-word index which relates topic headings to West's key numbers. The case digests themselves come next, preceded by an analysis, or outline, listing the topic headings in numerical order by key number. Approximately 2,000 decisions of the Court of Military Appeals and the service courts of military review are digested.

54. Williams, Jay R., *Effects of Labeling the "Drug-Abuser": An Inquiry*. Rockville, Maryland: National Institute on Drug Abuse,

1976. Pages: v, **39**. Price: \$4.00 (paperback); **\$2.25** (microfiche). Bibliography. For sale by National Technical Information Service, Springfield, VA **22161**. Publisher's address: National Institute on Drug Abuse, **11400** Rockville Pike, Rockville, MD **20852**.

This essay is probably of more historical than practical interest at the present time. In the early 1970's, scientists of the National Institute on Drug Abuse were concerned that labeling of adolescents as drug-abusers might cause them to use drugs even more, and to turn to other types of crime as normal avenues for restoration of self-esteem were closed off or at least perceived to be so. The essay presented in the pamphlet here noted was commissioned by the Institute in an effort to determine whether an elaborate research project on drug-abuser labeling should be undertaken.

The author notes that labeling can indeed have important effects on self-esteem, but that, in the case of drug use or abuse, the assumptions summarized above are of doubtful validity. Drug use is now so commonplace, and peer group support for the adolescent drug user is so great, that apprehension by the police and official labeling as a drug-abuser are as likely as not to have a positive effect on self-esteem. The Institute accepted this conclusion and decided not to do further research on the problem of labeling.

The book is organized in twelve short chapters. An explanatory foreword is provided, together with an extensive bibliography. Citations are given in the text.

The author, Jay R. Williams, Ph.D., was associated with the Research Triangle Institute in North Carolina when this study was originally prepared in **1973**, and when the version here noted was published in **1976**. The National Institute on Drug Abuse is an agency of the U.S. Government, located within the Alcohol, Drug Abuse, and Mental Health Administration, of the Public Health Service, within the U.S. Department of Health and Human Services.

55. Y'Blood, William T., *Red Sun Setting: The Battle of the Philippine Sea*. Annapolis, Maryland: U.S. Naval Institute, **1981**. Pages: xi, **257**. Price: **\$18.95**. Maps, glossary, four appendices, bibliography, index. Publisher's address: Marketing Department, Naval Institute Press, U.S. Naval Institute, Annapolis, MD **21402**.

The Battle of the Philippine Sea took place in June of 1944, west of the islands of Guam, Rota, Tinian, and Saipan. It was one of the greatest naval aircraft battles of World War II. Though considered an American victory, the conduct of this battle is still a subject of controversy among military historians. The American commander, Admiral Raymond A. Spruance, kept his fleet on the defensive, thinking that he had to do so in order to protect certain American transport vessels. Mr. Y'Blood reviews the strategy of the entire battle from the point of view of both the Japanese and American navies, and concludes that Admiral Spruance was in error. The Japanese, he argues, were interested primarily in attacking American aircraft carriers, and if the American fleet had engaged the Japanese more aggressively the subsequent Battle of Leyte Gulf might have been avoided.

Mr. Y'Blood's conclusions are of course hindsight almost forty years after the event. If Admiral Spruance in fact chose the wrong course of action, it is still open to question whether he could have known enough of Japanese intentions to have made a better choice.

The book is organized in eight chapters, describing the battle in great detail from the point of view of the sailors and airmen who fought it. A preface, glossary of terms, table of contents, and explanatory introduction are provided. Many illustrations and maps are included. Four appendices list the ships and aircraft units of the two navies participating in the battle, and provide statistics on the search-and-rescue missions and attack sorties carried out by the American forces. Footnotes are collected together near the end of the book. A bibliography and a subject-matter index conclude the book.

The author, Mr. William T. Y'Blood, is a commercial pilot, flying 747's for Continental Airlines of Denver, Colorado. He is an enthusiastic student of military history, especially World War II. He has published a number of articles on the history of aviation.

INDEX FOR VOLUME 93

I. INTRODUCTION

This index follows the format of the cumulative indices which were published as volume 91 (winter 1981) and as volume 81 (summer 1978) of the *Military Law Review*. Those indices are supplemented in volume 92 (spring 1981) and succeeding volumes.

The purpose of one-volume indices is threefold. First, the subject-matter headings under which writings are classifiable are identified. Readers can then easily go to other one-volume indices in this series, or to the cumulative indices, and discover what else has been published under the same headings. Second, new subject-matter headings are most easily added, volume by volume, as the need for them arises. Third, the volume indices are a means of starting the collection and organization of the entries which will eventually be used in other cumulative indices in the future. This will save much time and effort in the long term.

This index is organized in five parts, of which this introduction is the first. Part II, below, is a list in alphabetical order of the names of all authors whose writings are published in this volume. Part III, the subject-matter index, is the heart of the entire index. This part opens with a list of subject-matter headings newly added in this volume. It is followed by the listing of articles in alphabetical order by title under the various subject headings. The subject matter index is followed by part IV, a list of all the writings in this volume in alphabetical order by title.

The fifth and last part of the index is a book review index. The first part of this is an alphabetical list of the names of all authors of the books and other publications which are the subjects of formal book reviews published in this volume. The second part of the book review index is an alphabetical list of all the reviews published herein, by book title, and also by review title when that differs from the book title. Excluded are items appearing in "Publications Received and Briefly Noted," above, which has its own index.

All titles are indexed in alphabetical order by first important word in the title, excluding, a, *an*, and *the*.

In general, writings are listed under as many different subject-matter headings as possible. Assignment of writings to headings is based on the opinion of the editor and does not necessarily reflect the views of The Judge Advocate General’s School, the Department of the Army, or any governmental agency.

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